



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



9. 7/27/26
10. 10. 10.
11. 11. 11.

A
COLLECTION
OF THE
REPORTS OF CASES,
THE
Statutes, and Ecclesiastical Laws,
RELATING TO
TITHES.

WITH
A COPIOUS ANALYTICAL INDEX.

By F. K. EAGLE, Esq. LL.B. AND E. YOUNGE, Esq.
OF THE MIDDLE TEMPLE, BARRISTERS AT LAW.

IN FOUR VOLUMES.

VOL. IV.
By FRANCIS KING EAGLE, Esq. LL.B.

LONDON:
S. SWEET, 3, CHANCERY-LANE; R. PHENEY, INNER TEMPLE LANE;
A. MAXWELL, 21, AND STEVENS AND SONS, 39, BELL YARD;
Law Booksellers and Publishers:
J. PARKER, OXFORD; AND DEIGHTON AND SONS, CAMBRIDGE.

1826.

LELAND STANFORD JR. UNIVERSITY.

α. 55478

JUL 9 1901

LIBRARY OF THE
LELAND STANFORD JR. UNIVERSITY
LAW DEPARTMENT.

L O N D O N :

PRINTED BY C. ROWORTH, BELL YARD,
TEMPLE BAR.

A TABLE

OF THE

HEADS OF THE INDEX.

ACCOUNT.	Page 343	CHERRY TREES, <i>see</i> WOOD.	
ACORNS.	343	CHICKENS.	Page 357
ADVOWSON.	343	CHURCH.	357
AFTERCROP—AFTERMATH — AF- TERPASTURE.	343	CINQUEFOIL.	357
AGISTMENT.	344	CISTERTIANS.	357
AGREEMENT.	348	CLOVER.	358
ALDER, <i>see</i> WOOD.		COALS.	358
ALIEN PRIORIES.	349	COLESEED.	358
ALTERAGIUM.	349	COLLEGES, <i>see</i> CHANTRIES.	
ANNUITY.	349	COMMISSION.	358
APPEAL.	349	COMMON AND COMMONERS.	358
APPLES.	349	COMPOSITION.	359
APPROPRIATION.	350	COMPOSITION REAL.	361
ASH, <i>see</i> WOOD.		CONIES, <i>see</i> DISCHARGE—RABBITS.	
ASSART.	350	CONVOCA'TION, <i>see</i> CANONS.	
ASSUMPSIT, ACTION OF.	350	COPYHOLD, <i>see</i> TITHES, <i>how they pass</i> .	
AUGMENTATION.	351	COPYHOLDER.	362
BARREN CATTLE, <i>see</i> AGISTMENT— CATTLE.		CORN, <i>see</i> TITHES, <i>small</i> .	
BARREN LAND.	351	COVENANT.	363
BEANS, <i>see</i> PEAS.		CREAM, <i>see</i> MILK.	
BEASTS, <i>see</i> AGISTMENT.		CURATE.	363
BEECH, <i>see</i> WOOD.		CUSTOM.	363
BEEES, <i>see</i> HONEY.		DEAN AND CHAPTER.	365
BIRCH, <i>see</i> WOOD.		DEBT, ACTION OF, ON 2 EDW. 6.	365
BOUNDARIES.	353	DECOY.	369
BRICKS, <i>see</i> TITHES, <i>for what payable</i> .		DECREE, <i>see</i> TITHES, <i>Chancery</i> .	
BROOM.	354	DEER.	373
BULLS.	354	DEMESNES, <i>see</i> ENDOWMENT—MANOR.	
CALVES.	354	DIOCESE, <i>see</i> SPIRITUAL COURT.	
CANONS.	354	DISCHARGE.	370
CARRYING AWAY TITHES, <i>see</i> SET- TING OUT TITHES.		DISTURBANCE.	
CASE, ACTION ON THE.	355	DOWER.	376
CATTLE.	356	DUCKS, <i>see</i> DECOY.	
CHANCERY, <i>see</i> TITHES, <i>Chancery</i> .		EASTER OFFERINGS.	376
CHANTRIES.	356	ECCLESIA, <i>see</i> CHURCH, DISCHARGE.	
CHAPEL.	356	EJECTMENT.	376
CHAPLAIN, <i>see</i> CHAPEL—TITHES, <i>to</i> <i>whom</i> .		ELEGIT.	376
CHERRIES.	356	ENDOWMENT.	376
		ESTOVERS, <i>see</i> MODUS, <i>Fuel</i> .	
		EVIDENCE.	377
		EXCHEQUER, <i>see</i> TITHES, <i>Exchequer</i> .	
		EXCOMMUNICATION.	386

	Page		Page
EXPOSITION.	386	LONDON.	404
EXTRA PAROCHIAL TITHES.	386	LUCERN, <i>see</i> TARES.	
FARM, <i>see</i> MODUS, <i>Farm</i> .		MADDER.	408
FERÆ NATURÆ, <i>see</i> PARTRIDGES.		MANOR.	408
FERN.	387	MAPLE, <i>see</i> WOOD.	
FISH.	387	MILK.	408
FLAX.	388	MILLS.	409
FODDER, <i>see</i> DISCHARGE.		MINES.	411
FORCIBLE ENTRY.	388	MODUS.	
FOULNESS ISLAND.	388	I. <i>What it is.</i>	412
FUEL.	388	II. <i>By whom payable.</i>	413
FURZE.	389	III. <i>To whom payable.</i>	413
GARBA.	389	IV. <i>When to be paid.</i>	413
GARDEN.	389	V. <i>What is a good modus.</i>	414
GLEBE.	389	VI. <i>What is a bad modus.</i>	415
GRAIN.	390	1. <i>For Rankness.</i>	416
GRANT.	390	2. <i>For Uncertainty.</i>	417
GRASS.	391	VII. <i>How and when destroyed, or not.</i>	417
HAULM, <i>see</i> STUBBLE.		VIII. <i>How and where to be tried.</i>	
HAY.	391	1. <i>Common Law.</i>	418
HEADLANDS.	392	2. <i>Chancery.</i>	
HEARTH PENNY, <i>see</i> MODUS, <i>Fuel</i> .		A. <i>Bill.</i>	418
HEATH.	393	B. <i>Injunction.</i>	418
HEMP.	393	C. <i>Answer.</i>	418
HERBAGE.	393	D. <i>Issue.</i>	419
HERBS, <i>see</i> GARDEN.		E. <i>Decree.</i>	419
HOLLY, <i>see</i> WOOD.		F. <i>Costs.</i>	419
HONEY.	393	3. <i>Exchequer.</i>	
HOPS.	393	A. <i>Bill.</i>	419
HOSPITALERS.	394	B. <i>Injunction.</i>	420
HOTHOUSE PLANTS.	394	C. <i>Answer.</i>	420
HOUSES.	395	D. <i>Plea.</i>	422
HUNDRED.	395	E. <i>Tender.</i>	422
IMPROPRIATION & IMPROPRIA-		F. <i>Issue.</i>	422
TOR.	395	G. <i>Decree.</i>	423
INCLOSURE.	398	H. <i>Costs.</i>	423
INDICAVIT.	398	4. <i>Spiritual Court.</i>	423
INDUCTION, <i>see</i> INSTITUTION—REC-		IX. <i>Acre.</i>	424
TOR.		X. <i>Agistment.</i>	424
INNKEEPER, <i>see</i> PROHIBITION.		XI. <i>Apples.</i>	425
INSOLVENT ACT.	399	XII. <i>Beasts.</i>	425
INSTITUTION.	399	XIII. <i>Bees.</i>	425
INTRUSION, <i>see</i> SEVERANCE.		<i>Bigg, see M. Corn.</i>	
JOINT TENANTS.	399	<i>Bovate, see M. Orogang.</i>	
ISSUE.	399	XIV. <i>Calves.</i>	425
JURISDICTION, <i>see</i> SPIRITUAL COURT		<i>Cattle see M. Beasts.</i>	
—TITHES, <i>Common Law.</i>		<i>Chickens, see M. Eggs.</i>	
JURY.	399	<i>Cider, see M. Apples.</i>	
JUSTICES.	399	XV. <i>Clover.</i>	426
KING.	399	<i>Colts, see M. Foals.</i>	
KING'S BOOKS.	401	<i>Common, see Common.</i>	
LAMBS.	401	XVI. <i>Corn.</i>	426
LATERAN COUNCIL.	402	XVII. <i>Cows.</i>	426
LATTERMATH, <i>see</i> AFTERMATH—		<i>Cowwhite, see M. Milk.</i>	
HAY.		<i>Ducks, see M. Eggs.</i>	
LEAD ORE, <i>see</i> ORE.		XVIII. <i>Eggs.</i>	427
LEASE.	402	<i>Estovers, see M. Fuel.</i>	
LETTERS PATENT.	404	XIX. <i>Farm.</i>	427
LIME.	404	<i>Feathers, see M. Geese.</i>	
LIMITATION.	404	<i>Firewood, see M. Fuel.</i>	
		XX. <i>Foals.</i>	429
		XXI. <i>Forest.</i>	430

TABLE OF THE HEADS OF THE INDEX.

v

(MODUS.—continued.)

XXII. <i>Fruit.</i>	Page 430	PEAS AND BEANS.	Page 446
XXIII. <i>Fuel.</i>	430	PENSION.	447
XXIV. <i>Garden.</i>	430	PHEASANTS, <i>see</i> PARTRIDGES.	
<i>Garth, see M. Orchard.</i>		PIGEONS.	447
XXV. <i>Geese.</i>	430	PIGS.	447
<i>Grasses, see M. Hay.</i>		POOR'S RATE.	448
XXVI. <i>Hamlet.</i>	431	PORTION,	448
XXVII. <i>Hay.</i>	431	POTATOES.	448
<i>Hearth, Hearth-penny, Hearth-</i>		PRÆMONSTRATENSES, <i>see</i> Dis-	
<i>wood, see M. Fuel.</i>		CHARGE.	
<i>Heifer, see M. Cow.</i>		PRESCRIPTION.	448
<i>Hens, see M. Eggs.</i>		PRESUMPTION.	449
<i>Herbage, see M. Agistment.</i>		PROHIBITION.	450
XXVIII. <i>Honey.</i>	432	I. <i>What it is.</i>	450
XXIX. <i>Hops.</i>	432	II. <i>Who may have it.</i>	451
<i>House, see M. Hay.</i>		III. <i>In what cases it lies.</i>	451
<i>Inclosure, see M. Parish.</i>		IV. <i>By what courts granted.</i>	453
<i>Lactage, see M. Milk.</i>		V. <i>How obtained.</i>	453
XXX. <i>Lambs.</i>	432	VI. <i>At what time.</i>	454
XXXI. <i>Manor.</i>	433	VII. <i>When after sentence.</i>	454
<i>Marshland, see M. Parish.</i>		VIII. <i>To what courts.</i>	455
XXXII. <i>Milk.</i>	433	IX. <i>Upon what suggestion and</i>	
<i>Mill, see Mill.</i>		<i>proof.</i>	455
XXXIII. <i>Onion Seed.</i>	434	X. <i>Attachment.</i>	457
XXXIV. <i>Orchard.</i>	434	XI. <i>Declaration.</i>	457
XXXV. <i>Oxgang.</i>	434	XII. <i>Consultation.</i>	458
<i>Pannage, see M. Agistment.</i>		XIII. <i>Costs.</i>	458
XXXVI. <i>Parish.</i>	434	XIV. <i>When a second prohibition.</i>	459
XXXVII. <i>Park.</i>	435	PURPRESTURE.	460
<i>Pears, see M. Apples.</i>		QUAKERS.	460
<i>Perry, see M. Apples.</i>		QUARRIES.	461
XXXVIII. <i>Pigs.</i>	435	QUEEN, <i>see</i> KING.	
XXXIX. <i>Potatoes.</i>	436	QUEEN ANNE'S BOUNTY, <i>see</i> AUG-	
XL. <i>Rape Seed.</i>	436	MENTATION.	
<i>Reeds, see M. Acre.</i>		RABBITS.	461
XLI. <i>Sheep.</i>	436	RAKINGS.	461
<i>Small Tithes, see Tithes, small.</i>		RANKNESS, <i>see</i> MODUS, <i>bad</i> —MODUS,	
<i>Township, see M. Vill.</i>		<i>Farm.</i>	
XLII. <i>Turnips.</i>	436	RAPE SEED, <i>see</i> TITHES, <i>small.</i>	
<i>Vegetables, see M. Garden.</i>		RATE TITHES.	462
XLIII. <i>Vill.</i>	436	RECTORY.	462
XLIV. <i>Wood.</i>	437	RENT.	463
XLV. <i>Wool.</i>	437	RESIDENCE, <i>see</i> NON-RESIDENCE.	
XLVI. <i>Yardland.</i>	437	REVIEW, BILL OF, <i>see</i> TITHES, <i>Chan-</i>	
NONÆ ROLLS.	438	<i>cery.</i>	
NON DECIMANDO, <i>see</i> DISCHARGE		ROAD, <i>see</i> TITHES, <i>how to be paid.</i>	
—IMPROPRIATOR.		SALT.	463
NON-RESIDENCE.	438	SCIRE FACIAS.	463
NOTICE.	439	SEEDS.	463
NURSERY.	440	SEQUESTRATION, <i>see</i> DISCHARGE.	
OFFERINGS.	444	SEQUESTRATOR, <i>see</i> TITHES, <i>to whom</i>	
ORE.	440	<i>payable.</i>	
OYSTERS.	441	SESSIONS, <i>see</i> QUAKERS—TITHES, <i>small.</i>	
PARK.	441	SETTING OUT TITHES.	464
PARLIAMENTARY SURVEY, <i>see</i>		SEVERANCE, <i>see</i> SETTING OUT TITHES.	
SURVEY.		SHEEP.	468
PARSON AND VICAR.	441	SHOCK, <i>see</i> RAKINGS—TITHES, <i>how to</i>	
PARSONAGE, <i>see</i> RECTORY.		<i>be paid.</i>	
PARTRIDGES.	446	SILVA CÆDUA.	468
		SIMONY.	469

SINECURE, <i>see</i> INSTITUTION.	
SMALL TITHES, <i>see</i> TITHES, <i>small</i> .	
SPIRITUAL COURT.	Page 469
SPOLIATION.	472
STUBBLE.	472
SURVEY, ECCLESIASTICAL, <i>see</i> EVIDENCE.	
SURVEY, PARLIAMENTARY.	473
TARES.	473
TEASELS.	475
TENDER,	475
TENTHS, <i>see</i> AUGMENTATION.	
TERRIERS, <i>see</i> EVIDENCE.	
TITHES.	
I. <i>What</i> .	476
II. <i>Great and small</i> .	477
III. <i>To whom payable</i> .	
1. <i>Rector</i> .	478
2. <i>Vicar, see Parson and Vicar</i> .	
3. <i>Portionist</i> .	479
4. <i>Sequestrator</i> .	479
5. <i>Chaplain</i> .	480
6. <i>King, see King—Extra parochial Tithes</i> .	
7. <i>Impropriator, see Impropriator</i> .	
IV. <i>By whom payable</i> .	480
V. <i>For what payable</i> .	480
VI. <i>When to be paid, see Wool—Setting out Tithes</i> .	
VII. <i>Where to be paid</i> .	480
VIII. <i>How to be paid and taken</i> .	481
IX. <i>How and where to be tried</i> .	
1. <i>Common Law</i> .	482
2. <i>Chancery. A. Bill and Consolidation.</i>	484
B. <i>Demurrer</i> .	485
C. <i>Plea</i> .	485
D. <i>Answer</i> .	485
E. <i>Decree</i> .	485
F. <i>Issue</i> .	486
G. <i>Costs</i> .	486
<i>Tender, see Tender</i> .	

(TITHES, <i>How and where tried—continued</i> .)	
3. <i>Exchequer. A. Bill and Consolidation.</i>	Page 486
B. <i>Injunction</i> .	489
C. <i>Demurrer</i> .	489
D. <i>Plea</i> .	490
E. <i>Answer</i> .	490
F. <i>Replication</i> .	491
G. <i>Interrogatories</i> .	491
H. <i>Deposition</i> .	492
I. <i>Publication</i> .	492
K. <i>Decree</i> .	492
L. <i>Rehearing</i> .	492
M. <i>Commission</i> .	492
N. <i>Account</i> .	493
O. <i>Issue</i> .	493
P. <i>Costs</i> .	494
<i>Tender, see Tender</i> .	
4. <i>Spiritual Court, see Spiritual Court</i> .	
5. <i>Before Justices, see Tithes, small</i> .	
X. <i>How and by what words they pass</i> .	495
TOWN.	498
TRAVERSE.	498
TRESPASS.	498
TURF.	499
TURKEYS.	499
TURNIPS.	499
UNION OF CHURCHES.	499
UNITY.	499
VENISON.	503
VETCHES, <i>see</i> TARES.	
VICAR.	503
VICARAGE.	505
WASTE.	505
WAY.	505
WHEAT, <i>see</i> SETTING OUT TITHES.	
WILD DUCKS, <i>see</i> DECOY.	
WILD or WEALD, <i>see</i> WOOD.	
WILLOWS, <i>see</i> WOOD—CUSTOM.	
WOAD.	506
WOOD, AND UNDERWOOD.	506
WOOL.	511

STATUTES

AND

PROCEEDINGS IN PARLIAMENT

CONCERNING

TITHES.

Magna Charta. 9 Hen. 3. c. 1.

1225.

FIRST, we have granted to God, and by this our present charter have confirmed, for us and our heirs for ever, that the church of England shall be free, and shall have all her rights entire, and her liberties unhurt.

13 Edw. 1. stat. 1. (West. 2.)

1285.

CHAP. 5.

Remedies to redress Usurpations of Advowsons of Churches, &c.

WHEREAS of advowsons of churches there be but three original writs, that is to say, one writ of right, and two of possession, which be *darrein presentment*, and *quare impedit*; and hitherto it has been used in the realm, that when any having no right to present, had presented to any church whose clerk was admitted, he that was very patron could not recover his advowson, but only by a writ of right, which should be tried by battle or by assize, whereby heirs within age, by fraud, or else by negligence of their wardens, and heirs both of great and mean estate, by negligence or fraud of tenants by the courtesy, women-tenants in dower, or otherwise, for term of life, or for years, or in fee-tail, were many times disherited of their advowsons, or at least, (which was the better for them) were driven to their writ of right, in which case hitherto they were utterly disinherited; it is provided, that such presentments shall not be so prejudicial to the right heirs, or to them unto whom such advowsons ought to revert after the death of any persons; for as often as any, having no right, does present, during the time that such heirs are in ward, or during the estates of tenants in dower, by the courtesy, or otherwise for term of life, or of years, or in tail, at the next avoidance, when the heir is come to full age, or when, after the death of the tenants before named, the advowson shall revert unto the heir being of full age, he shall have such action by writ of advowson possessory, as the last ancestor of such an heir should have had at the last avoidance happening in his time, being of full age before his death, or before the demise was made for term of life, or in fee-tail, as before is said. The same shall be observed in presentments made unto churches, being of the inheritance of wives, what time they shall be under the power of their husbands, which must be aided by this statute by the remedy aforesaid. Also religious men, as bishops, archdeacons, parsons of churches, and other spiritual men, shall be aided by this statute, in case any, having no right to present, do present unto churches belonging to prelaties, spiritual dignities, parsonages, or to houses of religion, what time such houses, prelaties, spiritual dignities, or parsonages be vacant.

Three original writs of advowson.

Usurpation of churches during particular estates shall not prejudice them in the reversion.

Presentations to churches of women during their coverture. Churches of religious persons.

1285.

or his heir, to demand the land so given in demesne, as it is ordained in the statute of Gloucester for lands leased to do, or to render the fourth part of the value of the land, or more.

CHAP. 43.

Hospitallers and Templars shall draw no Man into suit, &c.

Be it prohibited henceforth to Hospitallers and Templars, that hereafter they bring no man in plea before the keepers of their privileges for any matter, the knowledge whereof belongs to the King's court: which if they do, first, they shall yield damages to the party grieved, and be grievously punished unto the King. The King also prohibits to the keepers of such privileges, that henceforth they grant no citations at the instance of Hospitallers, Templars, or other persons privileged, before it be expressed upon what matter the citation ought to be made. And if the keepers do see that a citation is required upon any matter, the knowledge whereof belongs to the King's court, the keepers shall neither make nor knowledge the citation. And if the keepers do otherwise, they shall yield damages to the party grieved, and nevertheless shall be grievously punished by the King. And forasmuch as such persons privileged, deputy keepers, sub-priors, chantors, sextons, which are religious men, and which have nothing to satisfy the parties grieved, nor the King; which be more bold to offend the King's dignity than their superiors, to whom punishment may be assigned by their temporalities. Let the prelates of such obedients therefore beware henceforth, that they do not suffer their obedients to usurp any jurisdiction in prejudice of the King and his crown; and if they do, their superiors shall be charged for their fact, as much as if they had been convicted upon their proper act.

Stat. *Circumspectè agatis.* (1) 13 Ed. 1. st. 4. 1 Gw. 1.

Certain Cases wherein the King's Prohibition does not lie.

Cases wherein
the King's pro-
hibition does
not lie.

Tithes and offer-
ing.

Mortuaries.

THE King to his Judges sends greeting: Use yourselves circumspectly in the matter concerning the bishop of Norwich and his clergy, not punishing them if they hold pleas of such things as are merely spiritual; viz.

If a rector demand tithes, great or small, so that the fourth part of the value of any church be not demanded:

Item. If a rector demand a mortuary in places where a mortuary has been used to be given:

In these cases the ecclesiastical judge has conusance, notwithstanding the King's prohibition, although it be produced.

The Lord the King answered to these articles, that in tithes, obventions, oblations, mortuaries, when the question is as aforesaid, there is no room for a prohibition. And if a clerk or religious person shall have sold his tithes to any one for money, when gathered into his barn, or any where else, and plea be holden thereof in the spiritual court, the King's prohibition lies; because by sale things spiritual become temporal, and so the tithes pass into chattels.

Item. If the dispute be concerning the right of tithes having its origin in the right of patronage, and the quantity of those tithes exceed the fourth part of the church, the King's prohibition lies.

(1) *Selden* says, that this has long since been received into practice by the name of a statute, and so called in acts of parliament, although antiently reputed rather as an ordinance made by the King and prelates.—*Hist. of Tithes*, c. 14. s. 3.

1296.

Stat. *Of the Writ of Consultation.* 24 E. 1.

Spiritual court.
Consultation.

WHEREAS, ecclesiastical judges often surcease to proceed in causes before them, by the King's writ of prohibition, in cases where remedy cannot be given to complainants in the King's courts, by any writ out of the chancery; so that such plaintiffs have been deprived of their right and remedy in both courts, as well temporal as spiritual, to their great damage, as the King has understood by grievous complaint:

Our

Our Lord the King wills and commands, that when ecclesiastical judges surcease in the aforesaid cases, by the King's prohibition shewn to them, that the chancellor, or the chief justice of our Lord the King, for the time being, having seen the libel in the cause, at the instance of the plaintiff, if they see that remedy cannot be given in his case by any writ out of the chancery, but that the spiritual court ought to determine the cause, do write to the ecclesiastical judges, before whom the cause was first moved, that they proceed therein, notwithstanding the King's prohibition before directed to them.

1296.

Stat. *De conjunctim Feoffatis.* 34 E. 1 st. 1.

1306.

FORASMUCH as pleas in court spiritual heretofore had many times undue delays, for that our writ, that is called *indicavit*, was many times brought before the judges in such matters at the beginning, and thereupon our chief justice could not proceed lawfully, nor in due manner to have consultation upon such process; it is agreed, that such a writ of *indicavit* shall not be granted thenceforth to any before issue joined between the parties in court-christian, and that our chancellor shall be certified thereof by inspection of the libel.

Articuli Cleri. 9 E. 2. st. 1. cc. 1, 2. 5, 6. Lyndw. App. 37. 1 Gw. 2.

1315.

CHAP. 1.

FIRST, laymen obtain prohibitions generally, upon tithes, obventions, oblations, mortuaries, redemption of penance, violent laying hands on clerks or converts, and in cases of defamation, in which cases spiritual penance is sought to be enjoined; the King answers to this article, that in tithes, oblations, obventions, mortuaries, (when they are propounded under these names,) the King's prohibition does not lie, although, on account of the long withholding of the same, the value must be reckoned in money. But, if a clerk or religious man sell his tithes, when gathered in his barn, or elsewhere, to any man for money; if the money be demanded before a spiritual judge, the King's prohibition lies, for by sale, spiritual things become temporal, and tithes are turned into chattels.

Spiritual court.
Indicavit.
Milla.

CHAP. 2.

Also, if dispute be concerning the right of tithes having its origin in the right of patronage, and the quantity of those tithes amount to the fourth part of the goods of the church, the King's prohibition lies, if the cause come before a judge spiritual.

CHAP. 5.

Also, if any one erect in his ground a mill of new, and after the rector of the place demand tithe for the same, the King's prohibition issues in this form: *quia de molendino tali hactenus decimæ non fuerunt solutæ, prohibemus, &c. Et sententiam excommunicationis, si quam hæc occasione promulgaveritis, revocetis omnino.*

Answer.—In such case prohibition never issued by the King's will, who decrees that it shall not issue hereafter.

CHAP. 6.

Where a Suit for one Offence may be prosecuted both in Court Spiritual and Temporal.

Also, if any cause or matter, the knowledge whereof belongs to a court spiritual, and shall be definitively determined before a spiritual judge, and do pass into a judgment, and shall not be suspended by an appeal; and after, if upon the same thing a question be moved before a temporal judge between the same parties, and it be proved by witness or instruments, such an exception is not to be admitted in a temporal court.

Answer.—When any one case is debated before judges spiritual or temporal, (1) as above appears (upon the case of laying violent hands on a clerk), it is thought, that notwithstanding the spiritual judgment, the King's court shall discuss the same matter, as the party shall think expedient for himself.

(1) This translation, which is copied from the printed statutes, is incorrect. In the original the words are, *Quando eadem causa diversis rationibus coram judicibus, &c.*

1324.

Stat. *De Terris Templariorum*. 17 E. 2. st. 3.

Whether, the order of Templars being dissolved, the lords of the fees might enjoy their lands.

The chief lords shall not have Templars' lands by escheat.

All the Templars' lands given to the prior of the hospital of St. John of Jerusalem.

FOR that the military order of Templars ceasing and being dissolved, the lands and tenements in demesnes, fees, and services of the brethren of the same order, which they held in their fraternity in the realm of England, in the time of the same ceasing and dissolution of the foresaid order, which were holden of our Lord the King, and divers other lords in this kingdom, were seised into the hands of our Sovereign Lord the King, and of divers other lords of the fees of them, who challenged the same lands for the consideration aforesaid, that the same lands ought to revert to them as their escheats. Whereupon after, in a parliament of the most noble Prince King Edward, son of King Edward, summoned and assembled at Westminster three weeks after the day of the Purification of the blessed Virgin Mary, in the seventeenth year of the reign of the same King, great conference was had before the King himself, in the presence of the prelates, earls, barons, nobles, and great men of the realm, and others there present, whether the foresaid lords of the fees, or others which held those lands that were the foresaid Templars', as is aforesaid, might retain them by the law of the realm, and with safe conscience. Whereupon the greater part of the King's council, as well the justices as other lay persons being assembled together, the said justices affirmed precisely, that our Lord the King, and other lords of the fees aforesaid, might well and lawfully by the laws of the realm retain the foresaid lands as their escheats, in regard of the ceasing and dissolution of the order aforesaid.

2. But because the lands and tenements aforesaid were given to the brethren of the said order for the defence of Christians, and the Holy Land, against Pagans and Sarazens, and other enemies of Christ and Christians, and the universal holy church; it seemed good to our Lord the King, the noblemen, and others assembled in the same parliament, for the health of their souls, and discharge of their consciences, that whereas the said military order of Templars were originally instituted for the defence of Christians, and the universal holy church, subversion of the enemies of Christ and Christians, and canonised to the augmentation of the honour of God, and liberal almsgiving, that the foresaid lands and tenements in demesnes, lordships, services, liberties, customs, and all other things pertaining thereunto, and by any thing depending thereupon, according to the wills of the givers, shall be assigned and delivered to other men of most holy religion, to the intent the fruits, obventions, and profits of the said lands and tenements, and other things, may be converted and charitably disposed to godly uses. And thereupon in the same parliament it is agreed, ordained, and established for law to continue for ever, that neither our Lord the King, nor any other lords of the fees aforesaid, or any other person, has title or right to retain the foresaid lands and tenements, with the appurtenances, or any part thereof, in regard of escheat, or by any other means, or hereafter to challenge the same lands in respect of the ceasing or dissolution of the foresaid military order of Templars, whereof the brethren of the same order were seised in their demesnes as of fee at the time of the ceasing and dissolution aforesaid; notwithstanding that the foresaid lands and tenements, after the said ceasing and dissolution, came to the hands of divers persons by descent of inheritance, gift, or purchase, or by any other means; and notwithstanding any law or custom of the realm of England, whereby this law, ordinance, and statute touching the assignment and conveyance of the foresaid lands and tenements might be hindered, impugned, or counterpleaded.

3. Seeing the order of the brethren of the hospital of St. John of Jerusalem was likewise ordained, instituted, and canonised for the defence of Christians and the holy church, it is agreed and enacted in the said parliament by our foresaid Lord the King, the prelates, earls, barons, and other great men of the realm there being, that insomuch as the foresaid order of the Templars is ceased and dissolved, and the foresaid order of the hospital is provided, instituted, and canonised for the defence of Christians, as is aforesaid, that all the lands, tenements, lordships, fees, churches, advowsons of churches, and liberties, with all things to them belonging, which were the said Templars' at the time of their ceasing

ceasing and dissolution, shall be assigned and delivered to the foresaid order of the hospital, and to the prior and brethren of the same hospital, to remain to them and their successors for ever. Wherefore our said Lord the King, by the mutual assent of the earls, barons, and noblemen aforesaid, of his regal authority in the same parliament, hath assigned to determine and deliver all the foresaid lands, tenements, lordships, fees, churches, advowsons, and liberties, with their appurtenances, to the foresaid order of the hospital, and to the said prior and brethren of the said order, to have and hold to the same prior and his brethren and successors for ever of our Lord the King, and other lords of the fees aforesaid by the same services, by which the brethren of the military order of Templars held the same, at the time of their ceasing and dissolution; as in relieving of the poor, in hospitalities, in celebrating divine service, defence of the Holy Land, and in all other offices and services beforetime due, by whatsoever names they be called; so always, that the godly and worthy will of the foresaid givers be observed, performed, and always religiously executed, as is aforesaid; saving to every person his action, if he had any, the time of the ceasing and dissolution aforesaid, against the same Templars in the foresaid lands and tenements, rents, services, customs, pensions, corrodiess, liberties, celebrating of masses, alms, and other things whatsoever, and liberty to prosecute his right against the said prior and brethren of the hospital aforesaid, and their brethren, and their successors, according to the law and custom of the realm, as he might have had against the foresaid Templars, if the order aforesaid had not been dissolved. And if it fortune that the said prior and brethren of the hospital aforesaid, or their successors, shall be put out of the foresaid lands and tenements, or of any parcel thereof, after they shall be seised of the same, they shall have power to recover their own according to the law of the realm.

4. And to the intent that the assignment before specified may be published and made known to all men to whom it behoves; it is ordained and agreed in the same parliament, that it shall be openly proclaimed in every county of this kingdom, that all and every person holding the lands and tenements aforesaid, and all others to whom it does appertain, shall be at Westminster one month after Easter day next, if they will, to hear the concord, provision, and assignment aforesaid, in form aforesaid.

14 E. 3. st. 1. c. 17. 20.

1340.

CHAP. 17.

A Juris Utrum maintainable for a Parson or Vicar.

ITEM, it is assented and established, that parsons, vicars, wardens of chapels, and provosts, wardens and priests of perpetual chantries, shall have their writs of *juris utrum* of lands and tenements, rents, and possessions annexed, or given perpetually in alms to vicarages, chapels, or chantries, and recover by other writs in their case as far forth as parsons of churches, or prebends. *Juris Utrum.*

CHAP. 20.

A Subsidy granted to the King of the Ninth Lamb, the Ninth Fleece, &c. (1)

ET pur les grantz relees et pardons des dettes, chatelx des fellons et de futifs, et moultz des autres choses et bons establissemantz desus escriptz, qe le roi ad grante as prelatz, contes, barons, et a toutz les communes de son roialme, pur leese de eux perpetuelement adurer; les ditz prelatz, contes, barons, et touz les communes

And for the great releases and pardons of debts, chattels of felons and fugitives, and may other things and good establishments, hereafter described, which the King has granted to the prelates, earls, barons, and the commons of his kingdom, for the ease of them perpetually to remain; the said prelates, earls, barons, and all the commons of the realm unanimously, and

(1) In the printed statutes this appears in the original French only, it has been however thought advisable to give a translation.

1340.

communes du roialme unement, et de un assent et de un bone volente, ciantz regard a la bone volonte qe le roi lour seignour lege ad devers eux, et a les grantz travaux qil ad fait et sustenu, aussibien en ses guerres d'Escoce, come devers les parties de France et aillours, et a la bone volente sil ad a travailler pur son roialme garder, ses guerres meintenir, et ses droitures purchacer, si ont ils grantez a lui le noefisme aignel, le noefisme toyson, et la noefisme garbe, a prendre par deux ans proschein avenir. Et des citees et burghs le verrai noefisme de toutz lour biens et chatelx, aprendre et lever par loial et resonable tax, par mesme les deux ans, en aide de la bone garde de son roialme, aussibien par terre come par meer, et de ses guerres aussibien devers les parties d'Escoce, come devers les parties de France Gascoigne et aillours. Et en droit des marchantz foreins qe ne demorerent poynt en citees nen burghes, et auxint des autres gentz qe demorerent en forestes gastines, et touz autres qe poynt ne vivent de lour gaynerie, ou de lour estor des berbiz, par bon acis de ceux qe sont deputez taxours, soient mys loialment a la value au quinzisme, sans estre desresonablement plus acant chargez. Et nest pas lentent le roi, ne des autres grantz et communes, qe par my cele grant fait au roi du quinzisme, les povres cottiers, ne autres qe vivent de travail de lour corps soient compris dedeinz le tax de dite quinzisme, einz soient deschargez par loeis de ceux qe sont deputez taxours, et des grantz qe sont deputez surveours.

and of one accord, and universal good will, having regard to the good will which the King their liege lord has towards them, and the great labours which he had undergone, as well in his wars with Scotland, as against the parts of France and elsewhere, and also the good will he has to labour for the preservation of his realm, maintenance of his wars, and attainment of his rights, have granted to him the ninth lamb, the ninth fleece, and the ninth garb, to be taken for two years next to come. And of cities and boroughs the very ninth of their goods and chattels, to be taken and levied by lawful and reasonable taxation, for the same two years, in aid of the good keeping of his realm, as well by land as by sea, and of his wars, as well against the parts of Scotland as of France, Gascony, and elsewhere; and of merchants, foreigners, who do not dwell in cities or boroughs, and also of others who dwell in forests and wastes, and all others who do not live by their gains, or by their store of sheep, let them be set lawfully at a fifteenth, by good advice of those who are deputed taxors, without being charged more unreasonably than before. And it is not the intent of the King, nor of the other great men and commons, that by means of this grant to the King of a fifteenth, the poor cottagers and others, who live by their bodily labour, shall be comprised within the tax of the said fifteenth, but be discharged by advice of those who are deputed taxors, and the great men who are deputed surveyors.

1343.

Tithe of wood.

17 E. 3. [2 Rot. Parl. 142.] Seld. H. of Tithes, 238. 1 Gw. 3.

THE commons pray that no man be drawn in plea in court-christian for tithes of wood or underwood, except in places where such tithes have used to be given.

Answer.—Let it be done of this as it has been done heretofore.

1344.

Of tithe of wood.

18 E. 3. 2 Rot. Parl. 149. No. 9. Seld. 238. 1 Gw. 3.

THE commons pray, that as a constitution is made by the prelates to take tithes of all manner of wood, which thing was never used, and that niefs and wives might make testaments, which is against reason, that he would please by him and his good council, to order a remedy, and that his people should remain in the same state as they had used to be in the time of all his progenitors, and that prohibitions should be granted to all those who are impleaded of the tithes of wood, without having a consultation.

Answer.—The King wills that law and reason be done therein.

18 E.

18 E. 3. st. 3. cc. 5 & 7. 2 Rot. Parl. 153. N^o 50. Seld. H. of Tithes, 434.
1 Gw. 3.

1344.

ITEM, That no prohibition be granted out of Chancery but in case where we have the consance, and of right ought to have.

ITEM, Whereas writs of *scire facias* (1) have been granted to warn prelates, religious and other clerks, to answer concerning tithes in our Chancery, and to shew if they have any thing, or can say any thing, wherefore such tithes ought not to be restored to the said demandants, and to answer as well to us, as to the party of such tithes; it is granted, that such writs henceforth be not granted, and that the processes depending upon such writs be annulled and repealed, and that the parties be dismissed from the secular judges of such manner of pleas; saving to us our right, such as we and our ancestors have had, and were wont to have of reason.

Scire facias.

(1) See Seld. Hist. c. 14. s. 4. p. 434.

21 E. 3. 2 Rot. Parl. 170. Seld. 238. 1 Gw. 3.

1347.

THE commons shew, that lately the Archbishop of Canterbury, and the other prelates, ordained a constitution to give tithes of underwood sold only, where before this time no tithes were given; and now the men of holy church, by force of the constitution, take and demand tithes, as well of great wood as of underwood, sold and not sold, against what they have used from time immemorial, to the great damage of the commons; wherefore they pray remedy in each point.

Tithe of wood and underwood.

Answer.—The Archbishop of Canterbury, and the other prelates, have answered, that such tithe is demanded by reason of the aforesaid constitution, only of underwood.

25 E. 3. 2 Rot. Parl. 241. Seld. 239. 1 Gw. 4.

1351-2.

THE commons pray, that if the clergy, in right of tithes of highwood and underwood, or of any other thing, demand or attempt any thing new, but only that, and in those places, whereof they have been of old time seised as in right of their churches; that it may please our Lord the King to grant prohibition thereof, without consultation, to all those who will ask it in such case; and that the said people of holy church be forbidden to demand tithes of gross wood.

Of tithe of wood and underwood.

Answer.—The King and his council will advise of this petition.

43 E. 3. 2 Rot. Parl. 301, 1 Gw. 4.

1369.

THE commons pray, that it be declared in what case tithe of wood and of underwood ought to be given of right, in places where it has not been given heretofore; and also that it be put in certain, what manner of wood ought to be called *silva cædua*; and in case any one be impleaded in court-christian of the tithe of wood or underwood, that a prohibition be granted thereafter, and an attachment thereupon in chancery, as well to the judges as parties, as is customary in other cases, without having a consultation.

Of tithe of wood. *Silva cædua.*

Answer.—Let the statute in this case ordained, be kept and holden.

45 E. 3. c. 3. 1 Gw. 4.

1371.

AT the complaint of the said great men and commons, shewing by their petition, that whereas they sell their great wood of the age of twenty years, or forty years or more, to merchants, to their own profit, or in aid of the King in his wars, parsons and vicars of holy church implead and trouble the said merchants in the spiritual court for tithes of the said wood, in the name of the word *silva cædua*, whereby they cannot sell their woods to the true value, to

A prohibition shall be granted where a suit is commenced in the spiritual court for *silva cædua*.
the

1371.

the great damage of them and of the realm; (1) it is ordained and established, that a prohibition in this case shall be granted, and upon the same an attachment, as it has been used before this time.

(1) In 2 Rot. Parl. 305. the petition proceeds thus:—"They therefore pray the King and his council that they will apply a suitable remedy, and openly declare and inter-

"pret these words *silva cædua*, as in the understanding of the commons, underwood is comprised in these words *silva cædua*, and not trees of such age. Let a prohibition, &c."

1373.

Tithe of wood.

47 E. 3. 2 Rot. Parl. 319. 1 Gw. 5.

ALL the commons of the realm pray, that whereas at the last parliament holden at Winchester, the lords and commons of the land made their complaint, that parsons and vicars of holy church troubled them in court-christian for the tithes of great wood, that is to say, of the age of twenty years and above, by colour of this word *silva cædua*; at their request it was ordained, that no wood that was or should be of the age of twenty years and more, should be titheable; and the parsons of holy church intending that this ordinance did not restrain their ancient encroachments, surmising that this was never affirmed for a statute, make suit in court-christian against the ordinance aforesaid, to the great damage of the people; wherefore may it please our said lord the King to affirm the said ordinance for a statute to endure for the time to come; and that a special prohibition upon the same statute be made thereof in chancery, forbidding them to hold plea in court-christian of tithes of wood of the age aforesaid.

Answer.—Such prohibition shall be granted as has been used of ancient times.

50 E. 3. c. 4.

Prohibition.

IT is ordained and established, that where a consultation is once duly granted upon a prohibition made to the judge of the holy church, that the same (1) judge may proceed in the cause by virtue of the same consultation, notwithstanding any other prohibition thereupon to him delivered, provided always that the matter in the libel of the said cause be not engrossed, enlarged, or otherwise changed.

(1) See *Bowry v. Wallington*, post.

1376.

Tithe of wood.

50 E. 3. 2 Rot. Parl. 357. N° 199. 1 Gw. 5.

THE clergy pray, that although tithe of wood, especially of *silva cædua*, be to be paid to God and the church of divine and ecclesiastical right; yet, where the question before the ecclesiastical judge is merely upon the tithe of *silva cædua*, the King's prohibitions are directed to the party and the judge, and the due and long accustomed consultations are not granted, but are too much restrained by clauses now of late subtilely invented against justice, so that the ecclesiastical judges, having conusance in causes of *silva cædua*, from the dread of such clauses so lately inserted as aforesaid, in consultations of this kind, will not dare to proceed; and although a sufficient consultation be granted, such as wont to be granted anciently, a prohibition similar to the first is obtained again upon the same matter: and nevertheless, if afterwards a second consultation being previously obtained, the judge proceed any farther in the cause, an attachment is given against the judge, the advocate, and the party, notwithstanding such last consultation: wherefore the same clergy pray, that in a cause of *silva cædua*, the due and accustomed consultations be granted without any difficulty and restraint whatsoever; that the aforesaid attachment, or any other molestation or disturbance in the secular court, cease, even after the first consultation granted; and that it may be lawful for the ecclesiastical judge after that, notwithstanding the King's prohibition may be afterwards obtained, to proceed with impunity, without offence to the King's majesty, and freely, without first obtaining another consultation.

Answer.—One consultation granted, is sufficient by the law in the same cause
or

or plaint; and if it be necessary, they shall have a special clause for prohibitions made, or to be made.

1376.

Ib. p. 358. N° 200.

ITEM, Some laymen expecting that tithe of *silva cædua* ought to be demanded from them, before any suit commenced against them or citation whatever; untruly suggesting, that they have been drawn into suit before the ecclesiastical judge for tithes of great wood, obtain the King's prohibition, which they produce to the judge and the party: by which means he to whom the tithes of such *silva cædua* is due, is prevented from instituting a suit for such tithes, and is unable to obtain a consultation usual upon such libel, which in this case he has not given. Wherefore the clergy pray that remedy be provided for this fraud, and that it may be lawful for the party against whom such prohibition is obtained, notwithstanding that, to cause the person who owes the tithes to be called to judgment, and to file a libel against him for tithe of *silva cædua* only, and that the ecclesiastical judge may punish the cunning procurer of such prohibition, according to the canon law.

Ib. N° 203.

ITEM, In tithe causes it is sometimes objected, that the tithes exceed the fourth part of the value of the church, and thereupon the King's prohibition is obtained, and thereby the secular court has conusance in a cause of tithes notoriously against the laws.

Ib. N° 205.

ITEM, If any one be drawn before the secular judge upon tithes under the name of chattels, and, being so drawn, he propound before the secular judge that they are tithes, and not chattels; let the ecclesiastical judge, not the secular judge, decide this, and terminate the question.

No answers appear to these petitions.

51 E. 3. 2 Rot. Parl. 37S. 1 Gw. 6.'

1376-7.

THE clergy pray, that whereas the tithes of wood called *silva cædua*, are to be paid to God and holy church of divine right and the right of holy church, nevertheless where process is depending of such kind of tithes before judges of holy church, the King's prohibitions are directed to the judges and parties, and the consultations due and agreeing with the laws of holy church, as in the articles and petitions following is more fully contained, are not granted; wherefore the said prelates and clergy pray, that in cases of tithes of such manner of *silva cædua*, due consultations be granted, without any difficulty whatsoever.

Answer.—Let the law thereof be used as heretofore it has reasonably been.

1 R. 2. c. 13. 3 Rot. Parl. 26. N° 120. 1 Gw. 7.

1377.

THE prelates and clergy of this realm greatly complain, for that the people of holy church suing in the spiritual court for their tithes, and other things which of right ought, and of old times were wont to appertain to the said spiritual court, and the judges of holy church taking conusance of such causes, and other persons therein meddling according to law, are maliciously and unduly for this cause indicted, imprisoned, and by secular power horribly oppressed, and also enforced with violence by oaths and grievous obligations, and many other means unduly compelled to desist and cease utterly of the things aforesaid, against the liberties and franchises of holy church; wherefore it is assented, that all such obligations made or to be made by duress or violence, shall be of no value. And as to those that by malice procure such indictments, and to be themselves indictors after the same indictees be so acquitted thereof, such procurers and indictors shall have and incur the same pain that is contained in the statute of Westminster the second, for those which procure false appeals to be made. And the justices of assises, or other justices; before whom such in-

dictees

1377.

dictes shall be acquitted, shall have power to inquire of such procurers and indictors, and duly to punish them according to their desert.

1 R. 2. c. 14. 3 Rot. Parl. 27. N^o 121. 1 Gw. 7.

Action.

IT is accorded, that at what time any person of holy church be drawn in plea in the secular court for his own tithes taken, by the name of goods taken away, and he which is so drawn in plea makes an exception, or alleges that the source and substance of the business is only upon tithes due of right, and of possession to his church, or other benefice, that in such case the general averment shall not be taken without shewing specially how the same was his lay chattel.

1 R. 2. 3 Rot. Parl. 26.

Prohibition.

ITEM, Whereas judges of holy church and parties are oftentimes greatly disturbed by the King's prohibitions, in causes and businesses belonging as well of right, as of custom, to the conusance of holy church, and the court-christian, that henceforth no prohibition be granted to the judge, the party, or any other, to disturb the conusance or suit in such case, unless the libel citatory or other document, sealed, signed, or otherwise proved, be beforehand seen and discussed in the chancery, by which it may sufficiently appear that the conusance of such cause ought to belong to the secular court, and not to the court-christian, viz. as it ought and in fact has been in times past.

It is answered, no prohibition shall issue, but in such manner, as has been used before this time. And moreover, let what was ordained, or granted in the last parliament concerning this matter, be in force.

1 R. 2. 3 Rot. Parl. 26. 1 Gw. 8.

Tithe of wood.

THE clergy pray, that all manner of tithe of wood called *silva cædua*, due to God and holy church, be lawfully paid. And in case the King's prohibition be delivered to the judge, or party, in a cause upon such kind of tithe, that a full and plenary consultation, without any new or undue restitution in this behalf be forthwith granted; and that the judges proceeding, the parties pursuing, and all others whosoever doing their duty on this part, be not for this cause hindered or aggrieved by indictments, imprisonments, condemnations, or in any other manner whatsoever.

Answer.—Let it be done in this case as has been used before these days.

1379.

2 R. 2. 3 Rot. Parl. 64. 1 Gw. 8.

Tithe of wood.
Silva cædua.

THE commons shew, that great mischief is done by persons of holy church who demand tithes of all manner of wood, by colour of *silva cædua*, and wrongfully harass them in divers parts of the kingdom, by grievous summonses before judges of holy church, so that by such summonses and grievances they pay tithes of great trees, and also for timber which they fall for the repairing of their houses, and for fuel, whereas they were not wont nor ought to pay them of right; but the said commons, from not being able, and from the great favour which the said persons of holy church have before the judges, and for that the judges are parties in such cases, submit to the wrongs in order to avoid greater mischief in future, which has often been done to the said commons heretofore: wherefore they pray remedy, that *silva cædua* be declared in other manner than the clerks have heretofore declared it for their profit, without the assent of the lords, and that it be ordained to be of underwood, or wood of a certain age under ten years; (for before the first pestilence no tithes of any manner of wood were given, granted, or demanded;) and that thereupon every man may have a prohibition upon his case; for those of the chancery intend, that of
whatsoever

whatsoever age the wood may be, if tithe thereof be required, a prohibition doth not lie thereupon.

1379.

Answer.—Be it used as it reasonably has been before this time.

7 R. 2. Reg. Orig. 49 a.(1) 1 Gw. 9.

1384.

IT was agreed before the King's council, in a parliament holden at Salisbury, that consultations ought to be granted of *silva cædua*, notwithstanding it is not renewed annually. And thereupon a consultation was awarded for the abbot of Notley, in a case of *silva cædua*, &c. *Silva cædua.*

(1) To what parliament to refer this agreement, I sufficiently know not, unless to that end of 7 R. 2. holden at Salisbury, the rolls whereof have nothing of it. Seld. 241.

8 R. 2. 3 Rot. Parl. 201. 1 Gw. 9.

THE commons pray, that whereas it is ordained by statute, that a general prohibition shall be granted in chancery, wherever men advanced to benefices of holy church demand tithes in court-christian of great wood, which is passed the age of twenty, thirty, or forty years, when such wood is cut and sold; and because no special prohibition is granted by the said statute, the said men of holy church sue in court-christian for the tithes aforesaid, notwithstanding such general prohibition directed to them, to the great damage and mischief of those who sell their wood in the form aforesaid; may it please our Lord the King, to grant a special prohibition, with attachments thereupon, against the ordinaries and those who sue against the statutes as aforesaid. Tithe of wood.

Answer.—Be it done as was heretofore ordained by the statute made at Westminster, in the forty-fifth year of the reign of our grandfather, whom God have mercy upon.

14 R. 2. 3 Rot. Parl. 281. 1 Gw. 9.

1390.

THE commons of the land pray, that whereas parsons and vicars claim and demand of the said commons, tithes of wood, that is, as well of wood of the age of forty or sixty years, as of the age of nine or ten years, and sue and implead them in court-christian, to the great travail, cost, and loss of the said commons, notwithstanding the statute before these times thereof ordained, by reason that the words *silva cædua* are not expounded nor declared in certain; may it therefore please our Lord the King to ordain, that the said words *silva cædua* may be declared, determined, and ascertained, that the country, which has been duly titheable from the twentieth year of King Edward, since the conquest, be charged with such tithes according to the tenor of a statute thereof made before these days, and not otherwise, so that the said commons may be certain of what manner of wood they ought to pay tithes, in titheable places, for the final discussion of the aforesaid debates. Tithe of wood.

Answer.—Be it as it has been heretofore.

15 R. 2. c. 6. 3 Rot. Parl. 293. 1 Gw. 10.

1391.

BECAUSE divers damages and hinderances oftentimes have happened, and daily do happen to the parishioners of divers places, by the appropriations of benefices of the same places; it is agreed and assented, that in every license henceforth to be made in the chancery, of the appropriation of any parish church, it shall be expressly contained and comprised, that the diocesan of the place, in the appropriation of such churches, shall ordain, according to the value of such churches, a convenient sum of money to be paid and distributed yearly of the fruits and profits of the same churches by those that shall have the said churches in proper use, and by their successors, to the poor parishioners of the said churches, in aid of their living and sustenance for ever; and also that the vicar be well and sufficiently endowed. Appropriation. Poor.

1391.

Tithe of wood.
Silva cædua.

15 R. 2. 3 Rot. Parl. 295. 1 Gw. 10.

THE commons pray, that whereas in many parts of the realm divers persons are sued, travailed, and put to great costs, and some are excommunicated in court-christian for tithes of great trees as well as of seasonable wood, under colour of this word *silva cædua*; that it may please our Lord the King, and the very sage lords of this parliament, that the word *silva cædua* be declared, and the age of wood titheable be ascertained, in this present parliament, in case of the said commons, considering that divers bills upon this matter have been inserted in the petitions of the commons in several parliaments before these days, and no remedy is ordained.

Answer.—Be it used as it has been used heretofore.

1392.

Wood—*silva*
cædua.

16 R. 2. 3 Rot. Parl. 307.

ITEM, The commons pray, that whereas there are many suits and grievances stirred up and depending between the persons of holy church and their parishioners, in divers parts of the country, for tithes of wood, because the meaning of *silva cædua* is not certainly declared, and particularly because it is not determined of what age wood shall be titheable, he would be pleased to declare in this parliament, the age of wood which shall be titheable.

It is answered, the King will consult respecting this matter, with the prelates, between this and the next parliament, and then if it please God, will order good remedy concerning it. In the mean time, let it be done as has been used heretofore.

1 Hen. 4. 3 Rot. Parl. 421.

Articles of Complaint drawn up against R. 2. at his Deposition.

Prohibition:
Spiritual court.

ITEM, When parties contending in the spiritual court, concerning causes merely ecclesiastical and spiritual, had endeavoured to obtain from chancery the King's prohibitions to impede legal process, and the chancellor had justly refused to grant them; yet the King by letters under his signet, frequently straitly prohibited the ecclesiastical judges from proceeding in such causes, wickedly infringing the liberties of the church approved of in *Magna Charta*, which he had sworn to observe; and damnably incurring the sentence of excommunication, pronounced against such violators by the holy fathers.

1400.

Cisterians.
Bulls.

2 Hen. 4. c. 4. 1 Gw. 11.

ITEM, Forasmuch as our Lord the King, upon grievous complaints to him made in this parliament, has understood, that the religious men of the order of Cisteaux in the realm of England, have purchased certain bulls to be quit and discharged to pay the tithes of their lands, tenements, and possessions let to farm, or cultivated, and occupied by other persons than by themselves, in great prejudice and derogation of the liberty of the holy church, and of many liege people of the realm; our Lord the King, willing thereupon to provide remedy, by the advice and assent of all the lords spiritual and temporal, and at the instance and request of the said commons, has ordained and established, that the religious persons of the order of Cisteaux shall stand in the state that they were before the time of such bulls purchased; and that as well they of the said order, as all other religious and seculars, of what estate or condition they be, who put the said bulls in execution, or henceforth purchase other such bulls of new, or by colour of the same bulls purchased, or to be purchased, take advantage in any manner; that process shall be made against them, and every of them, by garnishment of two months by writ of *præmunire facias*; and if they make default, or be attainted, that they shall incur the pains and forfeitures contained in the statute of provisors, made in the thirteenth year of the said King Richard.

The

The Petition and Answer are given at full length 3 Rot. Parl. 464. 1 Gw. 403. as follows :

A Petition was delivered in parliament touching the order of Cisteaux, which, by the King's command, was sent to the commons to be advised thereof, and to declare their advice. The words of which petition are as follows :— May it please our most excellent and most gracious Lord the King to take into his consideration, that whereas from time whereof the memory runneth not, the religious men of the order of Cisteaux of your realm of England have paid all manner of tithes of their lands, tenements, and possessions let out to farm, or cultivated and occupied by any other persons than themselves, and also of all manner of titheable things being in and upon the same lands, tenements, and possessions, as fully and entirely, and in the same manner as your other liege subjects of your said realm : and that so it is, that of late the said religious have purchased a bull of our most holy father the pope, by which our said most holy father has granted to the said religious that they shall not pay tithes of their lands, meadows, tenements, possessions, woods, cattle, or any other thing whatsoever, though they be or should be let out to farm ; any title of prescription, or right then acquired, or that might thereafter be acquired, to the contrary notwithstanding : which purchase and grant are in manifest opposition to the laws and customs of your realm ; by reason that divers compositions real and indentures are made between many of the said religious and others your lieges, for the taking of the said tithes : and also, by reason that in divers parishes the tithes demanded by the said religious, by colour of the said bull, exceed the fourth part of the value of the benefices within the limits and bounds of which they arise ; so that if the said bull should be executed, as well you, most dread Sire, as your lieges, patrons of the said benefices, will in a great measure lose the advowsons of the same benefices : and the consusance, which in this respect belongs, and all the said time has belonged, to your regale, will be discussed in court-christian, against the said laws and customs : in order therefore to prevent the great trouble and disturbance which might arise among your people by the motion and execution of such novelties within your realm ; may it please you, by the assent of your lords and commons assembled in this present parliament, to ordain, that if the said religious, or any of them, put the said bull in execution in any manner, that then he or they who shall so put such bull in execution, be put out of your protection by process duly made in that behalf, and his or their goods be forfeited to you, for God and in works of charity.

Answer.—It is granted by the King and the lords in parliament, that the order of Cisteaux shall remain in the same state in which it was before the time when the bulls comprised in the said petition were purchased ; and that as well those of the said order, as all other religious and seculars, of what estate or condition soever they be, who put the said bulls in execution, or henceforth purchase any such bulls anew, or by colour of the same bulls purchased or to be purchased, take any advantage in any manner, shall have process made against them, and each of them, by garnishment of two months, by writ of *præmunire facias* : and if they make default, or be attainted, that they be put out of the King's protection, and incur the pains and forfeitures contained in the statute of provisors, made in the thirteenth year of King Richard. And further, in order to eschew many the like mischiefs in time to come, it is agreed, that our same Lord the King shall send a letter to our most holy father the pope, to repeal and annul the said bulls so purchased, and of himself to abstain from making any such grant hereafter. To which answer the commons agreed, and that it should be made into a statute.

2 H. 4. 3 Rot. Parl. 468. 1 Gw. 11.

THE commons pray, that no appropriation of any church be henceforth made ; and that he who enjoys such appropriation in future, incur the penalty contained in the statute of provisors ; except that religious or any other persons whosoever, who have possessions in mortmain, may exchange and give such

Of appropriations of churches.

1400.



such possessions so in mortmain to secular hands, in order to have such benefice appropriated with the licence of the King, the patron, the lord, and the founder.

Answer.—The King will advise upon it.

2 H. 4. 3 Rot. Parl. 470. 1 Gw. 12.

Of tithe of wood.
Silva cadua.

THE commons say, that notwithstanding the statute (45 Edw. 3.) parsons and vicars of holy church claim tithes of all manner of wood as they were wont to do before, because consultations in such case in chancery have so easily been granted by colour of these words *silva cadua*, if it be so that the wood of which tithes are claimed be of the age of twenty years or more at the time of the cutting, and that a penalty be thereupon ordained in this present parliament.

Answer.—Be it used, as it has been well used before these days.

2 H. 4. 3 Rot. Parl. 474. 1 Gw. 12.

Agistment
tithes.

ITEM, The commons pray, that whereas divers men of holy church implead many liege subjects of the realm in court-christian for tithes of agistment of certain lands, meadows, pastures, and wastes, which have not been tithed of agistment before these days; that is to say, of lands sown, and meadows, the same year after they have taken their tithes of corn and hay, and of pastures and wastes, which have at no time been tithed for agistment, where the said persons of holy church take their tithes continually of lambs, calves, and other such manner of tithes, coming and being upon the said lands, meadows, pastures, and wastes, to the great damage and disseisin, as well of lords, as of others poor tenants of the commons of the realm. May it please our Lord the King, in this present parliament, to make declaration, whether the said tithes of agistment shall be paid or not, and to order a prohibition, or other due remedy against the parsons of holy church, who shall serve such pleas in court-christian, against any of the liege subjects of the King, against right, law, and reason.

Answer.—Let him who feels aggrieved sue specially.

1402.

4 H. 4. c. 12. 3 Rot. Parl. 499. 1 Gw. 13.

A confirmation
of the statute of
15 R. 2. c. 6.
touching the
appropriation of
churches.

The church of
Hadenham, in
the diocese of
Ely, appro-
priated to the
Archdeacon of
Ely.

All appropria-
tions of vicarages
made since the
first year of R. 2.
shall be void.

A vicar endow-
ed shall be a se-
cular man, and
not a religious.

IT is ordained and established, that the statute of appropriation of churches, and of the endowment of vicars in the same, made the fifteenth year of King Richard II. be firmly holden and kept, and put in due execution; and if any church be appropriated by license of the said King Richard, or of our Lord the King that now is, since the said fifteenth year, against the form of the said statute, the same shall be duly reformed according to the effect of the said statute, betwixt this and the feast of Easter next coming. And if such reformation be not made within the time aforesaid, that the appropriation and license thereof made be void, and utterly repealed and annulled for ever; except the church of Hadenham, in the diocese of Ely, which, for to eschew divers damages, discords, and disputes, that have been before this time betwixt the bishop of Ely and the archdeacon of Ely, upon the exercise of their jurisdiction, (as it was openly declared by the same bishop in presence of the King, and of the lords in parliament,) was of late appropriated, by the license of the King our lord, to the archdeacon of Ely, and his successors, to do divine service, keep hospitality, and to support other charges as pertaineth. Moreover it is ordained and established, that all the vicarages united, annexed, or appropriated, and the licenses thereof had, after the first year of the said King Richard, although they who have united, annexed, or appropriated such vicarages, be in possession of the same vicarages, or by virtue of such licenses, may in any wise be in possession of the same in any time to come, shall be also utterly void, revoked, repealed, annulled, and disappropriated for ever; and that henceforth in every church so appropriated, or to be appropriated, a secular person be ordained vicar perpetual, canonically instituted and inducted in the

the same, and sufficiently endowed by the discretion of the ordinary to do divine service, and to inform the people, and to keep hospitality there, (except the church of Hadenham aforesaid); and that no religious whatever be made vicar in any church so appropriated, or to be appropriated, by any means in time to come.

1402.

5 Hen. 4. c. 11. 3 Rot. Parl. 540. n. 66. 1 Gw. 14.

1403.

IT is ordained and established, that the farmers and all manner of occupiers of the manors, lands, tenements, and other possessions of aliens, shall pay and be bound to pay all manner of tithes thereof due to parsons and vicars of holy church, in whose parishes the same manors, lands, tenements, and possessions be so situate and due, as the law of holy church requires, notwithstanding that the said manors, lands, tenements, or other possessions be seised into the King's hands, or notwithstanding any prohibition made or to be made to the contrary.

Alien priories.

5 Hen. 4. 3 Rot. Parl. 540. 1 Gw. 14.

THE commons pray, that whereas many liege subjects of our Lord the King are oftentimes vexed and troubled by parsons and vicars of holy church, by citations and censures of holy church, for tithes of stones and slates opened and drawn out of quarries, no tithes having ever been demanded or paid of such stone or slate, that it may please the Lord the King to ordain, that if any prohibition be granted in such case, no consultation may be awarded to the contrary.

Quarries.

Answer.—The King will advise upon it.

5 Hen. 4. 3 Rot. Parl. 542. 1 Gw. 14.

THAT the noble ordinances and statutes made in the fourth year of the reign of our Lord the King concerning the appropriations of parochial churches, and the endowment of vicarages therein, may stand in their force and effect, and that they be firmly holden and kept, and put in due execution; and that if any letters patent be or shall be made to the contrary, they be avoided and holden for null.

Appropriations.

Answer.—Let the statutes thereof made be holden and kept.

7 Hen. 4. chap. 6.

IT is ordained and established, that no person, religious or secular, of what estate or condition he be, by colour of any bulls, containing such privileges, to be discharged of tithes pertaining to such parish churches, prebends, hospitals, or vicarages, purchased before the first year of King Richard II. after the conquest, or since not executed, shall put in execution any such bulls so purchased, or any such bulls to be purchased in time to come. And if any such religious or secular person, of what estate and condition he be, henceforth, by colour of such bulls, trouble any person of holy church, prebendaries, wardens of hospitals, or vicars, so that they cannot take or enjoy the tithes due or pertaining to them of their said benefices, that then such disturbers shall incur like process and pain as is ordained by the statute made against them of the order of *Cisteaux*, in the second year of the reign of our said Lord the King that now is.

Bulls.

2 Hen. 5. 4 Rot. Par. 22. n. 9. 1 Gw. 16.

1414.

THE commons pray, that in case final peace should hereafter be made between you our sovereign lord and your enemy of France, and thereupon all the possessions of the alien priories in England should be restored to the chief houses of the religious abroad, to which those possessions are belonging, damage

Alien priories.

1414.

damage and loss would come to your said kingdom, and to your people of the same kingdom, by the great rents and revenues which, from year to year ever afterwards, would be remitted from the said possessions to the chief houses aforesaid, to the very great impoverishment of the same your kingdom in this behalf, which God forbid; may it please your most noble and most gracious lordship, for the consideration aforesaid, and also in consideration that, at the beginning of the war between the two kingdoms, your liege subjects were, by a judgment given in the kingdom of France, for ever ousted and disinherited of all the possessions which they then had of the gift of your noble progenitors in the parts abroad within the jurisdiction of France, most graciously to ordain in this present parliament, by the assent of your lords spiritual and temporal, that all the possessions of the alien priories, situate in England, may remain in your hands to you and your heirs for ever, to the intent that divine services may henceforth be more duly celebrated in the aforesaid places by Englishmen, than they have hitherto been by Frenchmen.

Provided, that the possessions of the conventual alien priories, and of the priors who are inducted and instituted, and also all the alien possessions given by the most gracious Lord the King your father, whom God have mercy upon, to the master and college of Fotheringay, and their successors, notwithstanding the peace to be made, if any should be, together with all manors, franchises, and liberties, by our said Lord the King your father granted to the said master and college, and their successors, may perpetually remain; and saving also to every one of your liege subjects, as well spiritual as temporal, the estate and possession which they have at present in any of such alien possessions, whether they have purchased, or are to purchase them in perpetuity, or for term of life, or for term of years, of the chief houses abroad, by the license of our Lord the King your most noble father, whom God have mercy upon, or of King Edward III. your great grandfather, or of King Richard II. since the conquest, or of your own gracious gift, grant, confirmation, or license, now had in that behalf, paying and supporting all the charges, pensions, annuities, and corrodies, granted to any of your liege subjects by you, or any of your noble progenitors, to be taken out of the possessions or alien priories aforesaid.

Answer.—The King wills it: and also that the said master and college of Fotheringay have an exemplification from the King, under his great seal, of this petition, for their greater security in this behalf, and that with the assent of the lords spiritual and temporal in this present parliament assembled.

2 Hen. 5. 4 Rot. Parl. 21. 1 Gw. 15.

Silva cædua.

THE commons pray, that whereas they are often impleaded in court-christian for tithes of great wood of the age of twenty years and of forty years, and more, by the name of these words *silva cædua*; and in the statute made in the time of King Edward, the great grandfather of the Lord the now King, in the forty-fifth year of his reign, it is contained, that a prohibition be granted in this case, and thereupon an attachment, as it has been used before these days; by which statute no full declaration is made what wood is titheable, and what not, wherefore the justices of the land are of different opinions upon this matter; that if it please our Lord the King to limit and ordain, by the advice of the lords of this present parliament, that all manner of wood, which is of the age of twenty years or more, shall not be titheable in any manner for the time to come; and if it be under the age of twenty years it shall be titheable, if the custom of the country, where such wood is growing, demand it, and that in this case there be a prohibition, and thereupon an attachment, without granting a consultation.

Answer.—Because the matter of the petition requires great and mature deliberation and declaration, the King wills, that the said matter be adjourned, and remitted to the next parliament; and that the clerk of the parliament cause this article to be brought before the King and lords at the beginning of the next parliament, in order that a declaration may be had thereupon.

2 Hen. 5.

2 Hen. 5. chap. 3.

1414.

FORASMUCH as divers of the King's liege people are daily cited to appear in the spiritual court, before spiritual judges, there to answer divers persons, as well of things which touch freehold, debt, trespasses, covenants, and other things, whereof the conusance belongs to the court of our Lord the King, as of matrimony and testament, and when such persons so cited appear and demand a libel of that which is there surmised, to be informed to give their answer thereto, or otherwise to purchase a writ of our Lord the King, of prohibition, according to their case, which libel is denied by the said spiritual judges, to the intent that such person should not be aided by any such writ, against the law, and to the great damage of such persons so impleaded; our said Lord the King, by the advice and assent of the lords spiritual and temporal, and at the prayer of the commons, has ordained and established, that at what time the libel is grantable by law, that it shall be granted and delivered to the party without difficulty.

Spiritual court.
Libel.

6, 7, 8 Hen. 6. 4 Rot. Parl. 365.

MAY it please the very sage commons in this present parliament, well to consider that the abbey of Welhowe, in the diocese of Lincoln, is of the foundation of the most noble progenitors of our Sovereign Lord the King, and of his patronage; and that the abbot thereof, and his predecessors, from time whereof, &c. have had two parts of the church of Clay appropriated, the vicarage of the same church being taken out of it; which vicarage is of the patronage of the said abbot and convent, as in right of their church aforesaid, and is now void; and that the said abbey is situate near the sea, and great part of the possessions of the said abbey have now of late been surrounded by the sudden overflowing of the water of the sea, to the great prejudice and total destruction of the said abbot and convent thereof, and to the great impoverishment of the said patronage of our aforesaid Lord the King; and thereupon, for the reverence of God, to pray our said Lord the King, that he would be pleased, by the assent of the lords spiritual and temporal, in the said parliament assembled, to grant to the said abbot and his successors, license by authority of the said parliament, that they may appropriate, annex, unite, and incorporate the said vicarage to them and their successors, according to the form and effect of a schedule hereto annexed, for the love of God and the working of charity.

Appropriation.

Answer.—Be it as is desired in the petition, so that the supplicant find a secular chaplain removeable to minister the sacrament, and other rights to the parishioners of the church of Clee.

The King, to all, &c. greeting. Know ye, that whereas our beloved in Christ, the abbot and convent of the abbey of Welhowe, in Lincoln diocese, which abbey is of the foundation of our progenitors, former kings of England, and of our patronage, have had and held for a long time the church of Clee, in the diocese aforesaid, to their proper use, excepting the portion belonging to the vicarage of the same church, and have and held the said church, except as excepted; at present; which vicarage is of the proper advowson of the said abbot and convent, and is now vacant. We, of our special grace, with the advice and assent of the lords spiritual and temporal, and at the request of the commons of our kingdom of England in parliament now assembled, have granted and given license for us and our heirs, as much as in us lies, to our beloved in Christ, Henry, now abbot of the place aforesaid, and the convent thereof; that they may appropriate, annex, unite, and incorporate the vicarage of the church of Clee, to them and their successors and their said abbey of Welhowe, and it is so appropriated, annexed, united and incorporated, together with the aforesaid church of Clee, to have and hold to them and their successors aforesaid, and their abbey aforesaid, for ever, without hinderance or impediment, of us or our heirs, justices, escheators, sheriffs, or other bailiffs, officers,

officers, or ministers, of us or our heirs whatever, any statutes or ordinances to the contrary made ; or because that the advowson of the said vicarage is parcel of the foundation of his said abbey, notwithstanding. In witness whereof, &c.

1431.

9 Hen. 6. 4 Rot. Parl. 382.(1) 1 Gw. 18.

Silva cædua.
Prohibition.

THE commons (reciting the stat. of 45 Edw. 3.) say, that now so it is, that divers liege subjects of our Lord the King are impleaded and troubled in court-christian for the said causes, who thereupon come into the chancery of our Lord the King, in order to have a writ of prohibition and of attachment, according to the effect of the said statute, which writs are denied them against law and right, wherefore that it may please our Lord the King, by the advice and consent of the lords spiritual and temporal, in this present parliament, to ordain by the authority of the same parliament, that those persons who feel themselves aggrieved against the ordinance of the said statute, may have writs of prohibition and attachment thereupon, according to the effect of the said statute : and in case any such prohibition or attachment be denied to any of his liege subjects in the chancery of our Lord the King, that then such writs of prohibition and attachment be granted, as well in the bench of our Lord the King, as in the common bench ; and that the writs of prohibition and attachment, issuing out of those benches, may have the same force and effect, as the original writs of prohibition and attachment so issuing out of the chancery of our Lord the King ; provided always, that all those who sue out such writs of prohibition and attachment in one bench, or the others, before that the writs be granted to them, shall swear before the justices of the bench, whence the said writs of prohibition shall issue, that they were denied to them in the chancery.

Answer.—Let the statute before made be kept and executed according to the tenor thereof.

(1) In 10 Hen. 6. 4 Rot. Parl. 406. and in 11 Hen. 6. 4 Rot. Parl. 451. there are like petitions, almost in the same words, to which the answer in the latter is, “the King will advise upon it ;” but the proviso at the end of this is in both omitted.

10 Hen. 6. 4 Rot. Parl. 404. 1 Gw. 18.

Appropriations.

THE commons (reciting stat. 4. Hen. 4.) say, forasmuch as in that statute no penalty is imposed upon those who have churches to their own use, in case they suffer the vicarages therein to be inofficiate, and therefore in several parts of the kingdom they have suffered the said vicarages by the insufficient endowments thereof, and for their own gain, to be inofficiate and void for several years, by reason whereof in many parishes in the kingdom, old men and women have died without confession, or receiving any other sacrament of holy church, and infants have died without baptism, whereby several mischiefs and inconveniences from day to day happen, to the great dishonour of holy church ; they pray therefore, that it may be ordained by this present parliament, that if any religious or men of holy church, of what estate or condition soever they be, who have or hold any churches to their own use, hereafter suffer the vicarages of such churches to be inofficiate, without a resident vicar thereon, for six months ; that the same churches so holden to their own use, with all their appurtenances and dependencies, be absolutely disappropriated and disamortised for ever, saving only to the said religious and men of holy church their patronage therein, as they had before any appropriations were made of the said churches, or they were holden to their proper use, without having or retaining any pension, portion, annuity, or other charge whatever, and saving to the ordinaries their right by lapse.

Answer.—The King will advise upon it.

19 Hen. 6. Rot. Parl. 10 Rymer's F. 802.

1440.

Alien priories.

THE Lord King to all to whom, &c. Health.—Know ye that we fully confiding in the fidelity and circumspection of the venerable fathers in Christ, Henry, archbishop; John, bishop of Bath and Wells; John, bishop of St. Asaph; and William, bishop of Salisbury; and of our beloved and faithful cousin William, earl of Suffolk; and also of our beloved John Somerseth, Thomas Bekyngton, Richard Andrewes, Adam Moleyns, clerks: John Hampton, James Finys, esquires, and William Tresham; and by reason of the great confidence which we place and have in the aforesaid persons, have given and granted to them all those priories, manors, lands, tenements, rents, services, pensions, portions, apports, and possessions, being within our kingdom of England and Wales, and the marches of Wales aforesaid, (which are called the late priories and possessions of aliens,) lately appertaining or belonging to any religious house or houses in parts beyond the seas, and in our hands now being; to have and to hold to them, their heirs and assigns, of us and our heirs, by fealty only, for all services, burthens, exactions, and demands, from the feast of Easter last past for ever, together with the advowsons of all the said priories, rectories, churches, vicarages, chapels, chantries, hospitals, and other ecclesiastical benefices, which are now called, or lately were called, the priories and possessions of aliens, being within our said kingdom of England and Wales, and the marches of Wales aforesaid, lately appertaining and belonging to any such house or houses in the said parts beyond the seas; together also with all knights' fees, franchises, and liberties whatsoever, to the said premises, or any of them, in any manner belonging or appertaining.

We have granted also to the said archbishop, bishops, earl, John, Thomas, Richard, Adam, John, James, and William, all and singular rents and farms, which any person or persons is or are bound to render to us for any such priories, manors, lands, tenements, rents, services, pensions, portions, apports, and possessions whatsoever; to have and to hold the same rents and farms, together with the reversions as well of the said priories, manors, lands, tenements, rents, services, pensions, portions, apports, and possessions, when they shall happen, or may or ought to come in any manner to our hands, or the hands of our heirs, as of any other priories, manors, lands, tenements, rents, services, pensions, portions, apports, and possessions, within our kingdom of England and Wales, and the marches of Wales aforesaid, which are now, as is aforesaid, called, or lately were called, the priories and possessions of aliens, lately belonging or appertaining to any religious house or houses in the said parts beyond the seas, which any person or persons holds, hath, or occupies, hold, have, or occupy, for term of life by the courtesy of England, or in dower, or in fee-tail, or otherwise, for term of years, of our own grant or demise, or of the grant or demise of any of our progenitors, and which, by or after the decease of the said person or persons, or of any other person, or by any other means, may and ought to come, fall, revert, or remain, to and in our hands, or the hands of our heirs, to the said archbishop, bishops, earl, John, Thomas, Richard, Adam, John, James, and William, their heirs and assigns, from the feast aforesaid for ever, of us and our heirs, by fealty only for all the services, exactions, and demands.

And this, though express mention be not made in these presents of the real yearly value of all and singular the premises, or any of them, or of any gifts and grants heretofore made to the said archbishop, bishops, earl, John, Thomas, Richard, Adam, John, James, and William, or any of them, by us or any of our progenitors, or any statute, ordinance, or provision, heretofore to the contrary published, ordained, or provided, notwithstanding.

In witness, &c.—Witness the King, at his castle of Windsor, the twelfth day of September.

By the King himself, and of the date aforesaid, by the authority of parliament.

1531.

Spiritual court.
Diocese.

23 Hen. 8. chap. 9.

WHERE great number of the King's subjects, as well men, wives, servants, as other the King's subjects, dwelling in divers dioceses of this realm of England, and of Wales, heretofore have been at many times called by citations, and other processes compulsory, to appear in the arches, audience, and other high courts of the archbishops of this realm, far from, and out of the diocese where such men, wives, servants, and other the King's subjects been inhabitant and dwelling, and many times to answer to surmised and feigned causes, and suits of defamation, withholding of tithes, and such other like causes and matters, which have been sued more for malice, and for vexation, than for any just cause of suit.

No person shall
be cited out of
the diocese
where he dwells,
but in certain
cases.

2. And where certificate has been made by the summoner, apparitor, or any such light literate person, that the party against whom any such citation had been awarded, had been cited or summoned, and thereupon the same party, so certified to be cited or summoned, has not appeared according to the certificate, the same party therefore had been excommunicated, or at the least suspended from all divine service; and thereupon, before that he or she could be absolved, had been compelled, not only to pay the fees of the court, whereunto he or she was so called by citation, or other process, amounting to the sum of 2*s.* or 20*d.* at the least; but also to pay to the summoner, apparitor, or other light literate person, by whom he or she was so certified to be summoned, for every mile being distant from the place where he or she then dwelled, unto the same court whereunto he or she was so cited or summoned to appear, 2*d.* to the great charge and impoverishment of the King's subjects, and to the great occasion of misbehaviour and misliving of wives, women, and servants, and to the great impairment and diminution of their good names and honesty: Be it therefore enacted by the King our Sovereign Lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that no manner of person shall be henceforth cited or summoned, or otherwise called to appear by himself, or herself, or by any procurator, before any ordinary, archdeacon, commissary, official, or any other judge spiritual, out of the diocese, or peculiar jurisdiction where the person which shall be cited, summoned, or otherwise (as is aforesaid) called, shall be inhabiting and dwelling, at the time of awarding, or going forth of the same citation or summons; except that it shall be for, in, or upon any of the cases or causes hereafter written; that is to say, for any spiritual offence or cause committed or done, or omitted, foreslowed, (1) or neglected to be done, contrary to right or duty, by the bishop, archdeacon, commissary, official, or other person having spiritual jurisdiction, or being a spiritual judge, or by any other person or persons within the diocese, or other jurisdiction, whereunto he or she shall be cited, or otherwise lawfully called to appear and answer.

3. And except also it shall be by or upon matter or cause of appeal, or for other lawful cause, wherein any party shall find himself or herself grieved or wronged by the ordinary, judge or judges of the diocese or jurisdiction, or by any of his substitutes, officers, or ministers, after the matter or cause there first commenced, and began to be shewed unto the archbishop, or bishop, or any other having peculiar jurisdiction, within whose province the diocese or place peculiar is; or in case that the bishop, or other immediate judge or ordinary dare not, nor will not convent the party to be sued before them; or in case that the bishop of the diocese, or the judge of the place, within whose jurisdiction, or before whom the suit by this act shall be commenced and prosecuted, be the party directly or indirectly to the matter or cause of the same suit; or in case that any bishop, or any inferior judge, having under him jurisdiction in his own right and title, or by commission, make request, or instance to the archbishop, bishop, or other superior ordinary or judge, to take, treat, examine, or determine the matter before him, or his substitutes, and that to be done in cases only where the law civil or canon does affirm execution of such

(1) Foreslowed, delayed, obstructed.

1531.

The forfeit of an ordinary offending against the purport of this statute.

request, or instance of jurisdiction, to be lawful or tolerable; upon pain of forfeiture to every person by any ordinary, commissary, official, or substitute, by virtue of his office, or at the suit of any person to be cited, or otherwise summoned, or called contrary to this act, of double damages and costs for the vexation in that behalf sustained, to be recovered against any such ordinary, commissary, archdeacon, official, or other judge, as shall award or make process, or otherwise attempt or procure to do any thing contrary to this act, by action of debt, or action upon the case, according to the course of the common law of this realm, in any of the King's high courts, or in any other competent temporal court of record, by original writ of debt, bill, or plaint; in which action, no protection, other than such as shall be made under the King's great seal, and signed with his sign manual, shall be allowed, neither any wager of law, nor essoin shall be admitted; and upon pain of forfeiture for every person so summoned, cited, or otherwise called (as is abovesaid) to answer before any spiritual judge out of the diocese, or other jurisdiction where the said person so dwells, or is resident or abiding, 10*l.* sterling; the one-half thereof to be to the King our sovereign lord, and the other half to any person that will sue for the same in any of the King's said courts, or in any other the said temporal courts, by writ, information, bill, or plaint; in which action no protection shall be allowed, nor wager of law or essoin shall be admitted.

4. Provided always, that it shall be lawful to every archbishop of this realm to call, cite, and summon any person or persons inhabiting or dwelling in any bishop's diocese, within his province, for causes of heresy; if the bishop, or other ordinary immediate thereunto consent, or if that the same bishop, or other immediate ordinary or judge do not his duty in punishment of the same.

An archbishop may cite for heresy in another bishop's diocese.

5. Provided also, that this act shall not extend in any wise to the prerogative of the most reverend father in God, the archbishop of Canterbury, or any of his successors, of or for calling any person or persons out of the diocese where he or they be inhabiting, dwelling, or resident, for probate of any testament, or testaments, any thing in this act contained to the contrary notwithstanding.

Proviso for the probate of testaments in the diocese of Canterbury.

6. And be it further enacted, by authority aforesaid, that no archbishop, nor bishop, ordinary, official, commissary, or any other substitute or minister of any of the said archbishops, bishops, archdeacons, or other having any spiritual jurisdiction, at any time from the feast of Easter next coming, shall ask; demand, take, or receive of any of the King's subjects, any sum or sums of money for the seal of any citation, after the said feast to be awarded or obtained, than only 3*d.* sterling, upon the pains and penalties before cited, contained and expressed in this present act, to be in like form recovered, as is aforesaid.

The fees for the seal of a citation.

7. Provided always, that this act be not in any wise hurtful or prejudicial to the archbishop of York, nor to his successors, of, for, or concerning probate of testaments within his province and jurisdiction, by reason of any prerogative; any thing in this act to the contrary thereof notwithstanding.

Proviso for the probate of testaments in the diocese of York.

24 Hen. 8. chap. 12.

1532.

WHERE by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so has been accepted in the world, governed by one supreme head and King, having dignity, and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporality, been bounden and owen to bear, next to God, a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice, and final determination to all manner of folk; re-siants, or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurge, or begin within the limits thereof, without restraint, or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared,

Spiritual court. Appeal. The power, pre-eminence, and authority of the King of England.

The power, learning, and wisdom of the body spiritual.

1532.

The form and manner of government of the estate temporal.

declared, interpreted, and shewed by that part of the said body politic, called the spirituality, now being usually called the English church, which always has been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it has been always thought, and is also at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual do appertain; for the due administration whereof, and to keep them from corruption, and sinister affection, the King's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said church, both with honour and possessions; and the laws temporal, for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other.

The several inconveniences in suing of appeals to Rome.

2. And whereas the King, his most noble progenitors, and the nobility and commons of this said realm, at divers and sundry parliaments, as well in the time of King Edward I. Edward III. Richard II. Henry IV. and other noble Kings of this realm, made sundry ordinances, laws, statutes, and provisions, for the entire and sure conservation of the prerogatives, liberties, and pre-eminences of the said imperial crown of this realm, and of the jurisdiction spiritual and temporal, of the same, to keep it from the annoyance as well of the see of Rome, as from the authority of other foreign potentates, attempting the diminution or violation thereof, as often, and from time to time, as any such annoyance or attempt might be known or espied; and notwithstanding the said good statutes and ordinances, made in the time of the King's most noble progenitors, in preservation of the authority and prerogative of the said imperial crown, as is aforesaid; yet nevertheless, since the making of the said good statutes and ordinances, divers and sundry inconveniences and dangers, not provided for plainly by the said former acts, statutes, and ordinances, have risen and sprung by reason of appeals sued out of this realm to the see of Rome, in causes testamentary, causes of matrimony and divorces, right of tithes, oblations, and obventions, not only to the great inquietation, vexation, trouble, costs, and charges of the King's highness, and many of his subjects and resiants of this his realm, but also to the great delay and let to the true and speedy determination of the said causes, for so much as the parties appealing to the said court of Rome most commonly do the same to the delay of justice. And forasmuch as the great distance of way is so far out of this realm, so that the necessary proofs, nor the true knowledge of the cause, can neither there be so well known, nor the witnesses there so well examined, as within this realm, so that the parties grieved by means of the said appeals be most times without remedy: In consideration whereof, the King's Highness, his nobles, and commons, considering the great enormities, dangers, long delays, and hurts, that as well to his highness, as to his said nobles, subjects, commons, and resiants of this his realm, in the said causes testamentary, causes of matrimony and divorces, tithes, oblations, and obventions, do daily ensue, does therefore, by his royal assent, and by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, enact, establish, and ordain, that all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions, (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertains to the spiritual jurisdiction of this realm,) already commenced, moved, depending, being, happening, or hereafter coming in contention, debate, or question within this realm, or within any of the King's dominions, or marches of the same, or elsewhere, whether they concern the King our sovereign lord, his heirs and successors, or any other subjects or resiants within the same, of what degree soever they be, shall be henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined, within the King's jurisdiction and authority, and not elsewhere, in such

All causes determinable by any spiritual jurisdiction shall be adjudged within the King's authority.

such courts spiritual and temporal of the same, as the natures, conditions, and qualities of the cases and matters aforesaid in contention, or hereafter happening in contention, shall require, without having any respect to any custom, use, or sufferance, in hinderance, let, or prejudice of the same, or to any other thing used or suffered to the contrary thereof, by any other manner of person or persons in any manner of wise; any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments, of what natures, names, qualities, or conditions soever they be, from the see of Rome, or any other foreign courts or potentates of the world, or from and out of this realm, or any other the King's dominions, or marches of the same, to the see of Rome, or to any other foreign courts or potentates, to the let or impediment thereof in any wise notwithstanding. And that it shall be lawful to the King our sovereign lord, and to his heirs and successors, and to all other subjects or resiants within this realm, or within any of the King's dominions, or marches of the same, notwithstanding that hereafter it should happen any excommencement, excommunications, interdictions, citations, or any other censures, or foreign process out of any outward parts, to be fulminated, promulged, declared, or put in execution within this said realm, or any other place or places, for any of the causes before rehearsed, in prejudice, derogation, or contempt of this said act, and the very true meaning and execution thereof, may and shall nevertheless as well pursue, execute, have, and enjoy the effects, profits, benefits, and commodities of all such processes, sentences, judgments, and determinations done, or hereafter to be done, in any of the said courts spiritual or temporal, as the cases shall require, within the limits, power, or authority of this the King's said realm, and dominions and marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. As also, that all the spiritual prelates, pastors, ministers, and curates within this realm, and the dominions of the same, shall and may use, minister, execute, and do, or caused to be used, executed, ministered, and done, all sacraments, sacramentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as catholic and christian men ought to do, any foreign citations, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching any of the causes aforesaid, from or to the see of Rome, or any other foreign prince or foreign courts, to the let or contrary thereof in any wise notwithstanding.

The prelates of this realm may execute all sacraments and divine service to the subjects of this realm.

3. And if any of the said spiritual persons, by the occasion of the said fulminations of any of the same interdictions, censures, inhibitions, excommunications, appeals, suspensions, summons, or other foreign citations for the causes beforesaid, or for any of them, do at any time hereafter refuse to minister, or cause to be ministered, the said sacraments and sacramentals, and other divine services, in form as is aforesaid, shall for every such time or times that they or any of them, do refuse so to do, or cause to be done, have one year's imprisonment, and make fine and ransom at the King's pleasure.

The penalty of them who omit to do their duty.

4. And it is further enacted, by the authority aforesaid, that if any person or persons inhabiting or resiant within this realm, or within any of the King's said dominions, or marches of the same, or any other person or persons, of what estate, condition, or degree soever he or they be, at any time hereafter, for or in any the causes aforesaid, do attempt, move, purchase, or procure, from or to the see of Rome, or from or to any other foreign court or courts out of this realm, any manner foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgments, of what nature, kind, or quality soever they be, or execute any of the same process, or do any act or acts to the let, impediment, hinderance, or derogation of any process, sentence, judgment, or determination had, made, done, or hereafter to be had, done, or made, in any courts of this realm, or the King's said dominions, or marches of the same, for any of the causes aforesaid, contrary to the true meaning of this present act, and the execution of the same; that then every such person or persons so doing, and their fautors, comforters, abettors, procurers, executors, and counsellors, and every of them, being

Whosoever procures from the see of Rome, &c. any appeals, process, sentences, &c. shall incur the forfeiture of pre-munire.

1532.

being convict of the same; for every such default shall incur and run in the same pains, penalties, and forfeitures, ordained and provided by the statute of provision, and *promunire*, made in the sixteenth year of the reign of the right noble prince, King Richard II. against such as attempt, procure, or make provision to the see of Rome, or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the crown and dignity of this realm.

5. And furthermore, in eschewing the said great enormities, inquietations, delays, charges, and expenses hereafter to be sustained in pursuing of such appeals, and foreign process, for and concerning the causes aforesaid, or any of them, do therefore by authority aforesaid, ordain and enact, that in such cases where heretofore any of the King's subjects or resiants have used to pursue, provoke, or procure any appeal to the see of Rome, and in all other cases of appeals, in or for any of the causes aforesaid, they may and shall henceforth take, have, and use their appeals within this realm, and not elsewhere, in manner and form as hereafter ensues, and not otherwise; that is to say, first from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see, if in case any of the parties be grieved.

Before whom, and in what courts appeals shall be sued within this realm.

6. And in like wise if it be commenced before the bishop diocesan, or his commissary, from the bishop diocesan, or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given, to the archbishop of the province of Canterbury, if it be within his province; and if it be within the province of York then to the archbishop of York; and so likewise to all other archbishops in other the King's dominions, as the case by order of justice shall require, and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts.

Appeals ought to be within fifteen days.

7. And if the matter or contention for any of the causes aforesaid be or shall be commenced, by any of the King's subjects or resiants, before the archdeacon of any archbishop, or his commissary, then the party grieved shall or may take his appeal within fifteen days next after judgment or sentence there given, to the court of the arches, or audience of the same archbishop or archbishops; and from the said court of the arches, or audience, within fifteen days then next ensuing after judgment or sentence there given, to the archbishop of the same province, there to be definitively and finally determined, without any other or further process or appeal thereupon to be had or used.

Suits commenced before an archbishop shall be determined by him, without any further appeal.

8. And it is further enacted by the authority aforesaid, that all and every matter, cause, and contention now depending, or that hereafter shall be commenced by any of the King's subjects or resiants for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said matter, cause, or process shall be so commenced, definitively determined, decreed, or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence, or decree, otherwise than is by this act limited and appointed; saving always the prerogative of the archbishop, and church of Canterbury, in all the foresaid causes of appeals, to him and his successors to be sued within this realm, in such and like wise as they have been accustomed and used to have heretofore

The prerogative of the archbishop of Canterbury saved.

Before whom an appeal shall be used in any cause touching the King.

9. And in case any cause, matter, or contention, now depending for the causes before rehearsed, or any of them, or that hereafter shall come in contention for any of the same causes, in any of the foresaid courts, which has, does, shall, or may touch the King, his heirs or successors, Kings of this realm; that in all and every such case or cases the party grieved, as before is said, shall or may appeal from any of the said courts of this realm, where the said matter now being in contention, or hereafter shall come in contention, touching the King, his heirs, or successors, (as is aforesaid) shall happen to be ventilate, commenced, or begun, to the spiritual prelates, and other abbots and priors of the upper house, assembled and convocate by the King's writ in the

the convocation being, or next ensuing within the province or provinces where the same matter of contention is or shall be begun; so that every such appeal be taken by the party grieved, within fifteen days next after the judgment or sentence thereupon given or to be given; and that whatsoever be done, or shall be done and affirmed, determined, decreed, and adjudged by the foresaid prelates, abbots, and priors of the upper house of the said convocation, as is aforesaid, appertaining, concerning, or belonging to the King, his heirs, and successors, in any of the foresaid causes of appeals, shall stand and be taken for a final decree, sentence, judgment, definition, and determination, and the same matter, so determined, never after to come in question and debate, to be examined in any other court or courts.

10. And if it shall happen any person or persons hereafter to pursue or provoke any appeal contrary to the effect of this act, or refuse to obey, execute, and observe all things comprised within the same, concerning the said appeals, provocations, and other foreign processes to be sued out of this realm, for any the causes aforesaid, that then every such person or persons so doing, refusing, or offending contrary to the true meaning of this act, their procurers, fautors, advocates, counsellors, and abettors, and every of them, shall incur into the pains, forfeitures, and penalties ordained and provided in the said statute made in the said sixteenth year of King Richard the Second, and with like process to be made against the said offenders, as in the same statute made the said sixteenth year more plainly appears.

25 H. 8. c. 19.

WHERE the King's humble and obedient subjects, the clergy of this realm of England, have not only acknowledged according to the truth, that the convocation of the same clergy is, always has been, and ought to be assembled only by the King's writ, but also submitting themselves to the King's Majesty, have promised in *verbo sacerdotii*, that they will never henceforth presume to attempt, allege, claim, or put in ure, enact, promulge, or execute any new canons, constitutions, ordinances provincial, or other, or by whatsoever other name they shall be called in the convocation, unless the King's most royal assent and license may to them be had, to make, promulge, and execute the same; and that his Majesty do give his most royal assent and authority in that behalf: And where divers constitutions, ordinances, and canons provincial, or synodal, which heretofore have been enacted, be thought not only to be much prejudicial to the King's prerogative royal, and repugnant to the laws and statutes of this realm, but also overmuch onerous to his Highness, and his subjects; the said clergy have most humbly besought the King's Highness, that the said constitutions and canons may be committed to the examination and judgment of his Highness, and of two and thirty persons of the King's subjects, whereof sixteen to be of the upper and nether house of the parliament of the temporalty, and other sixteen to be of the clergy of this realm; and all the said two and thirty persons to be chosen and appointed by the King's Majesty; and that such of the said constitutions and canons, as shall be thought and determined by the said two and thirty persons, or the more part of them, worthy to be abrogated and annulled, shall be abolished, and made of no value accordingly; and such other of the same constitutions and canons, as by the said two and thirty, or the more part of them, shall be approved to stand with the laws of God, and consonant to the laws of this realm, shall stand in their full strength and power, the King's most royal assent first had and obtained to the same: be it therefore now enacted by authority of this present parliament, according to the said submission, and petition of the said clergy, that they, nor any of them, henceforth shall presume to attempt, allege, claim, or put in ure any constitutions, or ordinances provincial, or synodal, or any other canons; nor shall enact, promulge, or execute any such canons, constitutions, or ordinances provincial, by whatsoever name or names they may be called, in their convocations in time coming (which always shall be assembled by authority of the King's writ) unless the same

1532.

1533,

Canons.
Spiritual court.
Appeal.
Convocation.

Several canons have been prejudicial to the King's prerogative, and to the laws and statutes of this realm.

The clergy shall not enact any constitutions or ordinances without the King's assent.
The convocation shall be assembled by the King's writ.

same

1533.

The King may assign thirty-two persons to examine the canons, and to continue such as they think worth, and to abridge the residue.

No canons shall be executed, which be contrary to the King's prerogative, or to the laws.

There shall be no appeals to Rome, but appeals shall be according to the statute made 24 H. 8. c. 12.

Appeals from the archbishop's court into the chancery.

same clergy may have the King's most royal assent and license to make, promulge, and execute such canons, constitutions, and ordinances provincial or synodal, upon pain of every one of the said clergy doing contrary to this act, and being thereof convict, to suffer imprisonment, and make fine at the King's will.

2. And forasmuch as such canons, constitutions, and ordinances, as heretofore have been made by the clergy of this realm, cannot now at the session of this present parliament, by reason of shortness of time, be viewed, examined, and determined by the King's Highness, and thirty-two persons to be chosen and appointed according to the petition of the said clergy in form above rehearsed: be it therefore enacted by authority aforesaid, that the King's Highness shall have power and authority to nominate and assign at his pleasure the said two and thirty persons of his subjects, whereof sixteen to be of the clergy, and sixteen to be of the temporality of the upper and nether house of parliament; and if any of the said two and thirty persons so chosen shall happen to die before their determination, then his Highness to nominate other from time to time of the said two houses of parliament, to supply the number of the said two and thirty; and that the same two and thirty, by his Highness so to be named, shall have power and authority to view, search, and examine the said canons, constitutions, and ordinances provincial and synodal heretofore made, and such of them, as the King's Highness and the said two and thirty, or the more part of them, shall deem and adjudge worthy to be continued, kept, and obeyed, shall be henceforth kept, obeyed, and executed within this realm, so that the King's most royal assent under his great seal be first had to the same; and the residue of the said canons, constitutions, and ordinances provincial, which the King's Highness and the said two and thirty persons, or the more part of them, shall not approve, or deem and judge worthy to be abolished, abrogated and made frustrate, shall from thenceforth be void and of no effect, and never be put in execution within this realm. Provided always, that no canons, constitutions, or ordinances shall be made or put in execution within this realm by authority of the convocation of the clergy, which shall be contrary or repugnant to the King's prerogative royal, or the customs, laws, or statutes of this realm; any thing contained in this act to the contrary hereof notwithstanding.

3. And be it further enacted by authority aforesaid, that from the feast of Easter, which shall be in the year of our Lord God 1534, no manner of appeals shall be had, provoked, or made out of this realm, or out of any of the King's dominions, to the Bishop of Rome, nor to the See of Rome, in any causes or matters happening to be in contention, and having their commencement and beginning in any of the courts within this realm, or within any the King's dominions, of what nature, condition, or quality soever they be of; but that all manner of appeals of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had by the parties grieved, or having cause of appeal, after such manner, form, and condition, as is limited for appeals to be had and prosecuted within this realm in causes of matrimony, tithes, oblations, and obventions, by a statute thereof made and established since the beginning of this present parliament, and according to the form and effect of the said statute; any usage, custom, prescription, or any thing or things to the contrary hereof notwithstanding.

4. And for lack of justice at or in any the courts of the archbishops of this realm, or in any the King's dominions, it shall be lawful to the party grieved to appeal to the King's Majesty in the King's court of chancery; and that upon every such appeal, a commission shall be directed under the great seal to such persons as shall be named by the King's Highness, his heirs, or successors, like as in case of appeal from the admiral's court, to hear and definitely determine such appeals, and the causes concerning the same. Which commissioners so by the King's Highness, his heirs, or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence, as the said commissioners shall make and

decree

decree in and upon any such appeal, shall be good and effectual, and also definitive; and no further appeals to be had or made from the said commissioners for the same.

1533.

5. And if any person or persons, at any time after the said feast of Easter, provoke, or sue any manner of appeals, of what nature or condition soever they be of, to the said bishops of Rome, or to the See of Rome, or do procure or execute any manner of process from the see of Rome, or by authority thereof, to the derogation or let of the due execution of this act, or contrary to the same, that then every such person or persons so doing, their aiders, counselors, and abettors, shall incur and run into the dangers, pains, and penalties contained and limited in the act of provision and *præmunire* made in the sixteenth year of the King's most noble progenitor, King Richard the Second, against such as sue to the court of Rome against the King's crown and prerogative royal.

Præmunire for suing of appeal to Rome, or executing any process from thence.

6. Provided always, that all manner of provocations and appeals hereafter to be had, made, or taken from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbeys, priories, and other houses and places exempt, in such cases as they were wont, or might afore the making of this act, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the bishop of Rome, otherwise called pope, or to the see of Rome, that in all these cases every person and persons, having cause to appeal or provocation, shall and may take and make their appeals and provocations immediately to the King's Majesty of this realm, in the court of chancery, in like manner and form as they used before to do to the see of Rome; which appeals and provocations so made, shall be definitively determined by authority of the King's commission, in such manner and form as in this act is abovementioned; so that no archbishop or bishop of this realm shall intermit or meddle with any such appeals, otherwise or in any other manner than they might have done afore the making of this act; any thing in this act to the contrary thereof notwithstanding.

Appeals from places exempt which were to the See of Rome, shall now be into the chancery.

7. Provided also, that such canons, constitutions, ordinances, and synodals provincial being already made, which will not be contrary or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's prerogative royal, shall now still be used and executed as they were afore the making of this act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the tenor, form, and effect of this present act.

What canons, &c. are still in force.

27 H. 8. c. 20. 1 Gw. 21.

1535.

FORASMUCH as divers numbers of evil-disposed persons inhabited in sundry counties, cities, towns, and places of this realm, having no respect to their duties to Almighty God, but against right and good conscience having attempted to subtract and withhold in some places the whole, and in some places great parts of their tithes and oblations, as well personal as predial, due unto God and holy church; and, pursuing such their detestable enormities and injuries, have attempted in late time past to disobey, contemn, and despise the process, laws, and decrees of the ecclesiastical court of this realm, in more temerous (1) and large manner than before this time has been seen: for reformation of which said injuries, and for unity and peace to be preserved amongst the King's subjects of this realm, our Sovereign Lord the King being supreme head on earth (under God) of the church of England, willing the spiritual rights and duties of that church to be preserved, continued, and maintained, has ordained and enacted by authority of this present parliament, that every of his subjects of this realm of England, Ireland, Wales and Calais, and marches of the same, according to the ecclesiastical laws and ordinances of his church of England, and after the laudable uses and customs of their parish, or other place where he dwells or occupies, shall yield and pay his tithes and offerings, and other duties of holy church; and that for such subtractions of any of the said tithes and offerings, or other duties, the parson, vicar, curate, or

Tithes how to be paid. Spiritual court. London.

Tithes shall be paid according to the custom of the parish where they be due.

The offender in subtracting of tithes shall be

(1) Temerarious.

other

1585.

convented before the ordinary.

The offender shall be bound by two justices of peace, &c. to obey the ordinary's sentence.

other party in that behalf grieved, may, by due process of the King's ecclesiastical laws of the church of England, convent the person or persons offending before his ordinary, or other competent judge of this realm, having authority to hear and determine the right of tithes, as also to compel the same person or persons offending to do and yield their said duties in that behalf. And in case the ordinary of the diocese, or his commissary, or the archdeacon or his official, or any other competent judge aforesaid, for any contempt, contumacy, disobedience, or other misdemeanour of the party defendant, make information and request to any of the King's most honourable council, or to the justices of the peace of the shire where such offender dwells, to assist and aid the same ordinary, commissary, archdeacon, official, or judge, to order or reform any such person in any cause before rehearsed; that then he of the King's said honourable council, or such two justices of peace, whereof the one to be of the *quorum*, to whom such information or request shall be made, shall have full power and authority, by virtue of this act, to attach, or cause to be attached, the person or persons against whom such information or request shall be made, and to commit the same person or persons to ward, there to remain without bail and mainprize, till that he or they shall have found sufficient surety, to be bound by recognizance or otherwise, before the King's said counsellor, or justice of peace, or any other like counsellor, or justice of peace, to the use of our said Sovereign Lord the King, to give due obedience to the process, proceedings, decrees and sentences of the ecclesiastical court of this realm, wherein such suit or matter for the premises shall depend or be. And that every of the King's said counsellors or two justices of the peace, whereof the one to be of the *quorum*, as is aforesaid, shall have full power and authority, by virtue of this act, to take, receive, and record recognizances and obligations in any of the causes above written.

This act shall not extend to the citizens of London.

Every person shall have his demand and defence according to the laws ecclesiastical.

2. Provided always, that this act, or any thing therein contained, shall not extend to any inhabitant of the city of London, for or concerning any manner of tithe, offering, or other ecclesiastical duty, grown and due, to be paid or yielded within the same city, because there is another order made for the payment of tithes and other duties within the said city.

3. Provided also, that every person and persons, being party or parties to any such suit, shall and may make and have his and their lawful action, demand or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample and liberal manner and form as they or any of them might have had, if this act had never been made; any thing in this act above written notwithstanding.

4. Provided always, and be it enacted by authority aforesaid, that this act for recovering of tithes, ne any thing therein contained, shall take force and effect but only until such time as the King's Highness, and such other thirty-two persons which his Highness shall name and appoint for the making and establishing of such laws as his Highness shall affirm and ratify, to be called the ecclesiastical laws of the church of England: and after the said laws so ratified and confirmed as is aforesaid, that then the said tithes to be paid to every ecclesiastical person according to such laws, and none otherwise.

27 H. 8. c. 21.

AN act for the payment of tithes within the city and suburbs of London, until another law and order shall be made and published for the same. (1)

(1) See 37 H. 8. c. 12. where this act is recited.

27 H. 8. c. 28. 1 Gw. 23.

Monasteries.

FORASMUCH as manifest sin, vicious, carnal, and abominable living is daily used and committed commonly in such little and small abbeys, priories, and other religious houses of monks, canons, and nuns, where the congregation

gregation of such religious persons is under the number of twelve persons, whereby the governors of such religious houses, and their convent, spoil, destroy, consume, and utterly waste, as well their churches, monasteries, priories, principal houses, farms, granges, lands, tenements and hereditaments, as the ornaments of their churches, and their goods and chattels, to the high displeasure of Almighty God, slander of good religion, and to the great infamy of the King's Highness and the realm, if redress should not be had thereof. And albeit that many continual visitations have been heretofore had, by the space of two hundred years and more, for an honest and charitable reformation of such unthrifty, carnal, and abominable living, yet, nevertheless, little or no amendment is hitherto had, but their vicious living shamelessly increases and augmentments, and by a cursed custom is so rooted and infected, that a great multitude of the religious persons in such small houses do rather choose to rove abroad in apostasy, than to conform themselves to the observation of good religion; so that without such small houses be utterly suppressed, and the religious persons therein committed to great and honourable monasteries of religion in this realm, where they may be compelled to live religiously, for reformation of their lives, the same else be no redress nor reformation in that behalf. In consideration whereof, the King's most royal majesty, being supreme head on earth, under God, of the church of England, daily studying and devising the increase, advancement, and exaltation of true doctrine and virtue in the said church, to the only glory and honour of God, and the total extirping and destruction of vice and sin, having knowledge that the premises be true, as well by the accounts of his late visitations, as by sundry credible informations; considering also that divers and great solemn monasteries of this realm, wherein (thanks to God) religion is right well kept and observed, be destitute of such full number of religious persons, as they ought and may keep, has thought good, that a plain declaration should be made of the premises, as well to the lords spiritual and temporal, as to other his loving subjects the commons in this present parliament assembled: whereupon the said lords and commons, by a great deliberation, finally be resolved, that it is and shall be much more to the pleasure of Almighty God, and for the honour of this his realm, that the possessions of such small religious houses, now being spent, spoiled, and wasted for increase and maintenance of sin, should be used and committed to better uses, and the unthrifty religious persons, so spending the same, to be compelled to reform their lives: and thereupon most humbly desire the King's highness that it may be enacted by authority of this present parliament, That his Majesty shall have and enjoy to him and his heirs for ever, all and singular such monasteries, priories, and other religious houses of monks, canons, and nuns, of what kinds of diversities of habits, rules, or order soever they be called or named, which have not in lands, tenements, rents, tithes, portions, and other hereditaments, above the clear yearly value of two hundred pounds. And in like manner shall have and enjoy all the sites and circuits of every such religious houses, and all and singular the manors, granges, meases, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rights, entries, conditions, and other hereditaments appertaining or belonging to every such monastery, priory, or other religious house, not having, as is aforesaid, above the said clear yearly value of two hundred pounds, in as large and ample manner as the abbots, priors, abbesses, prioresses, and other governors of such monasteries, priories, and other religious houses now have, or ought to have the same in the right of their houses. And that also his highness shall have to him and to his heirs all and singular such monasteries, abbeys, and priories, which at any time within one year next before the making of this act have been given and granted to his majesty by any abbot, prior, abbess, or prioress, under their convent seal, or that otherwise have been suppressed or dissolved, and all and singular the manors, lands, tenements, rents, services, reversions, tithes, pensions, portions, churches, chapels, advowsons, patronages, rights, entries, conditions, and all other interests and hereditaments to the same monasteries, abbeys, and priories, or to any of them appertaining or belonging; to have and to hold all and singular the premises, with all their rights,

All monasteries given to the King, which have not above two hundred pounds a year in lands.

The King shall have all monasteries before assured to him, or that have been suppressed.

1535.

They shall enjoy those abbey lands to whom the King has given them.

A saving of the right of others.

Fraudulent assurances made by governors of houses before their dissolutions, shall be void.

Ornaments, jewels, goods,

rights, profits, jurisdictions, and commodities, unto the King's Majesty, and his heirs and assigns for ever, to do and use therewith his and their own wills, to the pleasure of Almighty God, and to the honour and profit of this realm.

2. And it is ordained and enacted by the authority aforesaid, That all and every person and persons, and bodies politic, which now have, or hereafter shall have, any letters patents of the King's highness, of any of the sites, circuits, manors, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, or other hereditaments, which appertained to any monasteries, abbeys, or priories, heretofore given or granted to the King's highness, or otherwise suppressed or dissolved, or which appertain to any of the monasteries, abbeys, priories, or religious houses, that shall be suppressed or dissolved by the authority of this act, shall have and enjoy the said sites, circuits, manors, lands, tenements, rents, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, and all other hereditaments, contained and specified in their letters patents now being thereof made, and to be contained and expressed in any letters patents hereafter to be made, according to the tenor, purport, and effect of any such letters patents; and shall also have all such actions, suits, entries, and remedies, to all intents and purposes, for any thing and things contained in every such letters patents now made, or to be contained in any such letters hereafter to be made, in like manner, form, and conditions, as the abbots, priors, abbesses, prioresses, and other chief governors, of any religious houses which had the same, might or ought to have had, if they had not been suppressed or dissolved.

3. Saving to every person and persons, and bodies politic, their heirs and successors (other than the abbots, priors, abbesses, prioresses, and other chief governors of the said religious houses specified in this act, and the convents of the same, and their successors, and such as pretend to be founders, patrons, or donors of such religious houses, of any lands, tenements, or hereditaments belonging to the same, and their heirs and successors), all such right, title, interest, possessions, leases for years, rents, services, annuities, commodities, fees, offices, liberties, and livings, pensions, portions, corrodies, synodics, proxies, and all other profits as they or any of them have, ought, or might have had in or to any of the said monasteries, abbeys, priories, or other religious houses, or in or to any manors, lands, tenements, rents, reversions, tithes, pensions, portions, or other hereditaments appertaining or belonging, or that appertained to any of the said monasteries, priories, or other religious houses, as if the same monasteries, priories, or other religious houses had not been suppressed by this act, but had continued in their essential bodies and states that they now be, or were in.

4. Provided always, and be it enacted, That forasmuch as divers of the chief governors of such religious houses, determining the utter spoil and destruction of their houses, and dreading the suppressing thereof, for the maintenance of their detestable lives, have lately fraudulently and craftily made feoffments, estates, gifts, grants, and leases, under the convent seals, or suffered recoveries of their manors, lands, tenements, and hereditaments, in fee-simple, fee-tail, for term of life or lives, or for years, or charged the same with rents, or corrodies, to the great decay and diminution of the houses; that all such crafty and fraudulent recoveries, feoffments, estates, gifts, grants and leases, and every of them, made by any of the said chief governors of such religious houses, under their convent seals, within one year next before the making of this act, shall be utterly void and of none effect: provided always, That such person and persons as have leases for term of life, or years, whereupon are reserved the old rents and farms accustomed, and such as have any offices, fees, or corrodies, that have been accustomed or used in such religious houses, and have bought any livery or living in any such houses, shall have and enjoy their said leases, offices, fees, corrodies, liberties, liveries, and livings, as if this act had never been made.

5. And it is further enacted, by authority aforesaid, That the King's highness shall have and enjoy to his own proper use, all such ornaments, jewels, goods,

goods, chattels, and debts, which appertained or belonged to any of the chief governors of the said monasteries, or religious houses, in the right of their said monasteries or houses, at the first day of March, in the year of our Lord God 1535, or any time sithen whensoever, and to whose possession soever they shall come, or be found, except only such beasts, grain, and woods, and such other like chattel and revenues as have been sold before the said first day of March, or sithen, for the necessary or reasonable expenses or charges of any of the said monasteries or houses.

1535.

chattels, debts
of monasteries,
given to the
King.

Provided always, That such of the said chief governors which have been elect, or made abbots, priors, abbesses, or prioresses of any of the said religious houses sithen the first day of January, which was in the year of our Lord God 1534, and by reason thereof be bounden to pay the first-fruits to the King's highness, at days to come, limited by their bonds made for the same, that in every such case such chief governors, and their sureties, or any of them, shall be clearly discharged by authority of this act, against the King's highness, and all other persons, for the payment of such sums of money as they stand bounden to pay for the said first-fruits, or for any part thereof. And forasmuch as the clear yearly value of all the said monasteries, priories, and other religious houses in this realm, is certified into the King's exchequer, amongst the books of the yearly valuation of all the spiritual possessions of this realm, amongst which shall and may appear the certainty and number of such small and little religious houses, as have not in lands, tenements, rents, tithes, portions, and other hereditaments, above the said clear yearly value of two hundred pounds.

6. Be it therefore enacted by authority aforesaid, That the King's highness shall have and enjoy according to this act, the actual and real possession of all and singular such monasteries, priories, and other religious houses, as shall appear by the said certificate remaining in the King's exchequer, not to have in lands, tenements, rents, tithes, portions, and other hereditaments, above the said clear yearly value of two hundred pounds, so that his highness may lawfully give, grant, and dispose them, or any of them, at his will and pleasure, to the honour of God, and the wealth of this realm, without further inquisitions or offices to be had or found for the same.

The King shall
have the actual
possession of
the abbey lands.

In consideration of which premises to be had to his highness, and to his heirs, as is aforesaid, his majesty is pleased and contented, of his most excellent charity, to provide to every chief head and governor of every such religious house, during their lives, such yearly pensions and benefices as for their degrees and qualities shall be reasonable and convenient, wherein his highness will have most tender respect to such of the said chief governors as well and truly preserve and keep the goods and ornaments of their houses, to the use of his grace, without spoil, waste, or embezzling the same; and also his majesty will ordain and provide, that the covents of every such religious house shall have their capacities, if they will, to live honestly and virtuously abroad, and some convenient charity disposed to them towards their living, or else shall be committed to such honourable great monasteries of this realm wherein good religion is observed, as shall be limited by his highness, there to live religiously during their lives; and it is ordained by the authority aforesaid, that the chief governors and covents of such honourable great monasteries shall take and accept into their houses, from time to time, such number of the persons of the said covents as shall be assigned and appointed by the King's highness, and keep them religiously, during their lives, within their said monasteries, in like manner and form as the covents of such great monasteries be ordered and kept.

Provided always, that all archbishops, bishops, and other persons which be or shall be chargeable to and for the collection of the tenths granted, and going out of the spiritual possessions of this realm, shall be discharged and acquitted of and for such parts and portions of the said tenths wherewith the said houses of religion, suppressed and dissolved by this act, were charged or chargeable to the King's highness, except of such sums of money thereof, as they, or any of them have or shall have received for the said tenths, of the chief governors

1535.

of such religious houses. Provided also that where the clergy of the province of Canterbury stood, and be indebted to the King's highness in great sums of money, remaining yet unpaid, of the rest of a hundred thousand pounds granted and given to his Grace in their convocation, towards the payment whereof the said religious houses should have been contributory if they had not been suppressed by this act; and also some of the governors of the said religious houses have been collectors for levying of the said debt, and have received thereof great sums of money yet remaining in their hands, the King's most Royal Majesty is pleased and contented to deduct, abate, release, and defalk to the said clergy, of the said rest yet unpaid, as well such sums of money as any of the chief governors of such religious houses hath received, and not paid, as so much money as every of the said religious houses, suppressed by this act, were rated and taxed to pay in any one year, to and for the payment of the said hundred thousand pounds; and also the King's Majesty is pleased and contented that it be enacted by authority aforesaid, that his highness shall satisfy, content, and pay all and singular such just and true debts which have been owing to any person or persons by the chief governors of any the said religious houses, in as large and ample manner as the said chief governors should or ought to have done if this act had never been made. Provided always, that the King's Highness, at any time after the making of this act, may, at his pleasure, ordain and declare, by his letters-patent under his great seal, that such of the said religious houses which his highness shall not be disposed to have suppressed nor dissolved by authority of this act, shall still continue, remain, and be in the same body corporate, and in the said essential estate, quality, and condition, as well in possessions as otherwise, as they were before the making of this act, without any suppression or dissolution thereof, or of any part of the same, by the authority of this act; and that every such ordinance and declaration so to be made by the King's Highness, shall be good and effectual to the chief governors of such religious houses which his Majesty will not have suppressed, and to their successors, according to the tenors and purports of the letters-patent thereof to be made, any thing or things contained in this act to the contrary hereof notwithstanding. Provided also, that where the clergy of the province of York stood, and be indebted to the King's Highness in great sums of money yet unpaid, of the rest of such sums of money which was granted by them to his Majesty in their convocation, towards the payment whereof the religious houses that shall be suppressed and dissolved by this act, being within the same province, should have been contributory if they had not been dissolved; and also some of the governors of the said religious houses within the said province, that shall be suppressed by this act, have been collectors for levying of part of the said sums of money granted to the King's Highness, as is aforesaid, and have certain sums thereof in their hands yet unpaid, the King's Majesty is pleased and contented to deduct, abate, release, and defalk to the said clergy of the said province of York, of the rest of their said debt yet unpaid, as well such of the said sums of money as (by) any chief governors of any religious houses within the same province that shall be suppressed by this act, has been collected, and not paid, as so much money as every of the said religious houses suppressed by this act, were rated and taxed to pay in any one year, towards the payment of the said sums of money granted to the King's Highness.

A proviso for the cells of other monasteries being under obedience.

7. Provided always that this act, or any thing or things therein contained, shall not extend nor be prejudicial to any abbots or priors of any monasteries or priories being certified into the King's Exchequer to have in possessions and profits spiritual and temporal, above the clear yearly value of two hundred pounds, for or concerning such cells of religious houses appertaining or belonging to their monasteries or priories, in which cells the priors, or other chief governors thereof, be under the obedience of the abbots or priors to whom such cells belong, as the monks or canons of the convent of their monasteries or priories, and cannot sue, nor be sued, by the laws of this realm, in or by their own proper names, for the possession, or other things appertaining to such cells whereof they be priors or governors, but must sue and be sued in

and

1535.

and by the names of the abbots or priors to whom they be obediencers, and to whom such cells belong; and also be priors or governors dative and removable from time to time, and accountants of the profits of such cells, at the only pleasure and will of the abbots or priors to whom such cells belong; but that every such cell shall be and remain undissolved in the same estate, quality, and condition, as if this act had never been made; any thing in this act to the contrary hereof notwithstanding.

8. Saving always, and reserving unto every person and persons, being founders, patrons, or donors of any abbeyes, priories, or other religious houses, that shall be suppressed by this act, their heirs and successors, all such right, title, interest, possession, rents, annuities, fees, offices, leases, commons, and all other profits whatsoever which any of them have, or should have had, without fraud or covin, by any manner of means otherwise than by reason or occasion of the dissolution of the said abbeyes, priories, or other religious houses in, to, or upon any the said abbeyes, priories, or other religious houses whereof they be founders, patrons, or donors, or in, to, or upon any the lands, tenements, or other hereditaments appertaining or belonging to the same, in like manner, form, and condition as other persons and bodies politic be saved by this act, as is before rehearsed, and as if the said abbeyes, priories, or other religious houses, had not been suppressed and dissolved by this act, but had continued still in their essential bodies and estates as they be now in: any thing in this act to the contrary hereof notwithstanding.

The right of
founders and
patrons saved.

9. And be it further enacted, ordained, and established, by authority aforesaid, that all and singular persons, bodies politic and corporate, to whom the King's Majesty, his heirs, and successors, hereafter shall give, grant, let, or demise any site or precinct, with the houses thereupon built, together with the demesnes of any monastery, priories, or other religious houses, that shall be dissolved or given to the King's Highness by this act, and the heirs, successors, executors, and assigns of every such person, body politic and corporate, shall be bound by authority of this act, under the penalties hereafter ensuing, to keep, or cause to be kept, an honest continual house and household in the same site or precinct, and to occupy yearly as much of the same demesnes in ploughing and tillage of husbandry; that is to say, as much of the said demesnes which have been commonly used to be kept in tillage by the governors, abbots, or priors of the same houses, monasteries, or priories, or by their farmer or farmers occupying the same within the time of thirty years next before this act.

Hospitality and
husbandry shall
be kept upon
the site of the
houses sup-
pressed.

10. And if any person or persons, bodies politic or corporate, that shall be bounden by this act, do not keep an honest household of husbandry and tillage, in manner and form as is aforesaid, that then he or they so offending, shall forfeit to the King's Highness, for every month so offending, six pounds thirteen shillings and four-pence, to be recovered to his use in any of his Courts of Record.

11. And over that it is enacted by authority aforesaid, that all justices of peace in every shire where any such offence shall be committed or done, contrary to the true meaning and intent of this present act, shall in every quarter and general sessions within the limits of their commission, inquire of the premises, and shall have full power and authority to hear and determine the same, and to tax and assess no less fine for every of the said offences, than is before limited for the same offences, and the estreats thereof to be made and certified into the King's Exchequer, according and at such time and form as other estreats of fines, issues, and amerciaments have been made by the same justices.

Justices of
Peace shall in-
quire of and
punish offend-
ers.

28 H. 8. c. 11. 1 Gw. 32.

1536.

FORASMUCH as in the statute(1) of the payment unto the King's Majesty, his heirs, and successors, of the first-fruits of spiritual promotions, offices, benefices, and dignities within this realm, and other the King's dominions,

(1) 26 H. 8. c. 3.

c 2

express

1536.

express mention and declaration is not had, ne from what time the year shall be accounted, in which the first-fruits shall be due and payable to his highness, that is to wit, whether immediately from the death, resignation, or deprivation of every incumbent, or from the time of admission or new taking of possession in every promotion.

2. And also by reason that in the same statute it is not declared who shall have the fruits, tithes, and other profits of the said benefices, offices, promotions, and dignities spiritual, during the time of vacation thereof, divers of the archbishops and bishops of this realm have not only, when the time of perceiving and taking of tithes (that is to say wool, lamb, corn, and hay, and tithes usually paid at the holy time of Easter) hath approached, deferred the collation of such benefices as have been of their own patronage, but also have, upon presentations of clerks made unto them by the just patrons, protracted and deferred to institute, induct, and admit the same clerks, to the intent that they might have and perceive to their own use the same tithes growing, during the vacation; so that through such delays (over and above the first-fruits, which be justly due to the King's Highness) they have been constrained also to lose all or the most part of one year's profits of their benefices and promotions, and to serve the cure at their and their friends proper costs and charges, or utterly to forsake and give over their benefices and promotions, to their great loss and hinderance:

3. For reformation whereof, be it ordained and enacted by the King our Sovereign Lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that the said year, in which the first-fruits shall be paid to the King's Grace, shall begin and be accounted immediately after the avoidance or vacation of any such benefice or promotions spiritual afore rehearsed; and that the tithes, fruits, oblations, obventions, emoluments, commodities, advantages, rents, and all other whatsoever revenues, casualties, or profits, certain and uncertain, affering or belonging to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chantries only except) within this realm, or other the King's dominions, growing, rising, or coming, during the time of vacation of the same promotion spiritual, shall belong and affer to such person as shall be thereunto next presented, promoted, instituted, inducted, or admitted, and to his executors, towards the payment of the first-fruits to the King's Highness, his heirs, and successors; any usage, custom, liberty, privilege, or prescription to the contrary had, used, or being, in any wise notwithstanding.

4. And it is also enacted by the authority aforesaid, that if any archbishop, bishop, archdeacon, ordinary, or any other person or persons to their uses and behoof, at any time heretofore sith the first day of May last past, have perceived, received, or taken, or at any time hereafter do perceive, receive, or take the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties, coming, growing, or belonging, or which hereafter shall come, grow, affer, or belong, to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chantries only excepted) within this realm, or other the King's dominions, during the vacation of such archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity, or office (chantries only excepted) and the same, upon reasonable request from henceforth to be made, do not render, restore, satisfy, content, and pay to the next incumbent, being lawfully instituted, inducted, or admitted to such archdeaconry, deanery, prebend, parsonage, or vicarage, or other promotion, benefice, dignity, or office spiritual, except before excepted, or do let or interrupt the said incumbent to have the same; that then every archbishop, bishop, archdeacon, ordinary, or other person so doing, shall forfeit and lose the treble value of so much as he shall then have received of the fruits of every prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, whereof he so shall perceive, receive, or detain, let or interrupt the incumbent

to

The time from which first-fruits are due to the King. Fruits taken during the vacation of a benefice, shall be restored to his next incumbent.

The forfeiture of the ordinary who receives the fruits of a benefice during the vacation, and does not restore them to the next incumbent.

to perceive, receive, and have the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties; the moiety of which forfeiture shall be to the King our Sovereign Lord, and the other moiety thereof to the incumbent of the same prebend, parsonage, or vicarage, or other spiritual promotion, to be recovered in any of the King's courts, by action, bill, plaint, information, or otherwise, in which action or suit the defendant shall not be admitted to wage his law, nor any protection or essoin shall be unto the defendant allowed.

What part of the fruits of a benefice the ordinary may retain in his hands, and for what causes.

5. Provided always, that it shall be lawful to every archbishop, bishop, archdeacon, and ordinary, their officers and ministers, to retain in his or their custody so much of the tithes, fruits, obventions, oblations, emoluments, commodities, advantages, rents, revenues, casualties, and profits, as shall amount to pay unto such person or persons as have or shall serve or keep the cure of such archdeaconry, deanery, prebend, parsonage, or vicarage, or other spiritual promotion, during the vacation, his or their reasonable stipend or salary; and also for the collection, gathering, and levying of such tithes, fruits, emoluments, rents, and other profits rising and growing during the vacation aforesaid: any thing in this act contained to the contrary in any wise notwithstanding.

6. Provided also, and be it further enacted by the authority aforesaid, that in case any of the incumbents aforesaid happen to die, and before his death have caused any of his glebe lands to be manured and sown at his proper costs and charges with any corn or grain; that then in that case, all and every of the same incumbents may make and declare their testaments of all the profits of the corn growing upon the said glebe lands so manured and sown: any thing contained in this present act in any wise notwithstanding.

Incumbents may declare their wills of any corn sown by them upon their glebe lands.

7. (1) And where also before this time divers and many parsons, vicars, and other spiritual persons, being seised, for term of their lives, of and in the said spiritual promotions aforesaid, as well for great sums of money to them beforehand paid, as for other causes and considerations, have let in ferm for term of years, by sufficient writings, their said parsonages, vicarages, and other spiritual promotions, or part thereof, unto divers and many of the King's subjects; and after such leases by them so made, the lessors thereof have oftentimes used to resign their said benefices or spiritual promotions so demised and letten in ferm; by reason of which resignation, and other acts of the said lessors, the said benefices, and other spiritual promotions have been void, and the title and interests of the said leases have been thereby annihilated, and of none effect in the law, contrary to right and good conscience: for reformation whereof, and for a quietness the better hereafter to be had and continued between the King's subjects, be it enacted by authority of this present parliament, that from the foresaid first day of May last past, no manner of such lease, by sufficient writing heretofore made, nor hereafter to be made, by any spiritual person within this realm of England, Wales, or the marches of the same, to any lay person, of any parsonage, vicarage, or other spiritual promotion aforesaid, within this realm, upon which lease the rent and services reserved, with other the yearly charges of the lease, as in serving the cure and otherwise, shall amount, within forty shillings by the year, of as much as the said parsonage, vicarage, or other spiritual promotion aforesaid, so letten, is rated and valued at upon the King's books, for paying the first-fruits, shall be adjudged void, annihilated or determined, by reason of any such resignation, or other avoidance of the said benefice or spiritual promotion, so letten by the only act of the said lessor; but that every such lessee or grantee of any such benefices or spiritual promotions aforesaid, their executors or assigns, shall have and enjoy their terms and interests of and in the same, for the term of six years, to be accounted next and immediately after the said avoidance, if the said lessor do so long live, and the lease so by him before made, do so long continue and endure; and that after such avoidance, the successor or successors of every such lessor shall and may distrain for the rent and services so reserved, and have their actions of debt, and all other advantages by way of action, entry, or otherwise, against the said

If a spiritual person demise his benefice for years, and after resign or die, how long the lessee may enjoy it.

(1) The 7th, 8th, and 9th clauses of this act are repealed by 1 and 2 Ph. and M. c. 17.

1536.

lessee, his executors, or assigns, for recovery of the said rent, and covenants upon the said lease, reserved, as the lessor thereof might have had, if no such avoidance had been had.

8. And further be it enacted by the authority aforesaid, that if hereafter it happen any such lessor to decease and die before the end of the term by him so made, and that there be one year at least to come of the said term, that then it shall be lawful to the lessee thereof, his executors or assigns, to hold and enjoy their said lease to the end of the same year, wherein he is so entered at the time of his said lessor's death, if his said lease do so long continue, bearing and paying unto the successor of every such lessor, all such rent and services as for the remnant of the said year shall upon every such lease be due; for the recovery whereof the said successor shall and may have all such ways and advantages as before is limited and given to the successor, where his predecessor maketh such lease and resigneth.

The successor shall have the parsonage-house, and the glebe not sown.

9. Provided always, that every successor, after the death of his predecessor, may and shall have, upon one month's warning after the time of his induction, the mansion-house of every such parsonage, vicarage, or other spiritual promotion aforesaid, with the glebe belonging to the same, not being sown at the time of the said predecessor's death, for maintenance of his household, deducting thereof in his rent, as heretofore has been borne for the same, or as it is reasonably worth: any thing in this act contained to the contrary notwithstanding.

Provision for the curate who serves during the vacation.

10. Provided always, that if the fruits of the vacation of the said spiritual promotions be not sufficient to pay the curate's stipend and wages for serving the cure the vacation time, that then the same to be borne and paid by the next incumbent within fourteen days next after that he hath the possession of any of the said promotions spiritual.

28 H. 8. c. 16.

Bulls.

WHERE the bishop of Rome and his predecessors, of his and their covetous and ambitious mind, to the intent to advance and enrich themselves and the see of Rome, to the great impoverishing of this realm of England, and other the King's dominions, contrary to God's law, the laws and statutes of this realm, and in derogation of the imperial crown of this said realm, have heretofore wrongfully pretended, extorted, used, and exercised within the same, divers and many usurped powers, jurisdictions, and authorities, during, and by the which time, the said bishop and his predecessors, arrogantly and unjustly have taken upon them, for great sums of money, and other profits to them given, to grant unto the King's subjects, and other inhabitants within this realm, and other the King's dominions, many, divers, and sundry authorities, immunities, faculties, privileges, licenses, indulgences, and pre-eminences of divers kinds, natures, and qualities which, although they proceeded by an unjust and usurped authority, have been until now of late, by the subjects of this realm, timorously and ignorantly accepted, received, used, and erroneously put in exercise and execution; the which usurped authority, jurisdiction, and power, is now justly, truly, and ought to be clearly and absolutely extinguished, extirped, and abolished within this realm, and other the King's dominions; and forasmuch as all and every such person and persons, bodies politic and corporate, which unlawfully, and without any manner of authority or just ground, heretofore have timorously and ignorantly accepted, received, used, and erroneously put in execution, and exercise the said faculties, immunities, authorities, privileges, licenses, indulgences, and pre-eminences, have now sincere, pure, and perfect intelligence and knowledge of the said usurped authority, jurisdiction, and power; and that the said faculties, authorities, privileges, licenses and indulgences, so as is aforesaid accepted, received, used, and erroneously exercised, were, and been to all intents and purposes clearly void, frustrate, and of none effect; albeit, if they should be impeached, or interrupted of such privileges, liberties, pre-eminences, authorities, jurisdictions, profits, and other commodities, which they now have, use, and exercise by colour of such vain and void licenses,

licenses, dispensations, and faculties, it should be to their intolerable inquietations and utter undoing.

1536.

All bulls and dispensations from the bishop or see of Rome to any subjects of this realm shall be void.

2. Wherefore be it enacted by authority of this present parliament, that all bulls, breves, faculties, and dispensations, of what names, natures, or qualities soever they be of, heretofore had or obtained of the bishop of Rome, or any of his predecessors, or by the authority of the see of Rome, by or to any subjects, residents, of bodies politic or corporate, of or in this realm, or of or in any other the King's dominions, shall from henceforth be clearly void, and of no value, force, strength, nor virtue; and shall never hereafter be used, admitted, allowed, pleaded, or alleged, in any places or courts of this realm, or of any other the King's dominions, upon the pains contained in the statute of provision and premunire, made in the sixteenth year of the reign of King Richard the Second; yet, notwithstanding, at the most humble petition and intercession of the lords spiritual and temporal, and the commons, in this present parliament assembled, it may please the King's Majesty of his most gracious benignity, goodness, and blessed disposition, that it may be enacted by authority of this parliament, that all marriages had and solemnized within this realm, or in any other the King's dominions, before the third day of November, in the twenty-sixth year of the King's most gracious reign, whereof there is no divorce or separation had by the ecclesiastical laws of this realm, and which marriages be not prohibited by God's laws, limited and declared in the act made in this present parliament for the establishment of the King's succession, or otherwise by holy scripture, shall be by authority of this present parliament good, lawful, and effectual, and shall be from the beginning of such marriages reputed, esteemed, taken, adjudged, received, approved, and allowed, by the authority of this present parliament, to all and singular purposes, effects, and intents, as good, as sufficient, and as available, as though no impediment of matrimony had ever been between them that have contracted and solemnized such marriages; and that all children procreated, and to be procreated in and under such marriages, shall be lawful to all intents and purposes.

A confirmation of former lawful marriages.

3. And that it may be also enacted by the authority of this present parliament, that all archbishops and bishops of this realm, or of any the King's dominions, consecrated, and at this present time taken and reputed for archbishops and bishops, may by authority of this present parliament, and not by virtue of any provision, or other foreign authority, license, faculty, or dispensation, keep, enjoy, and retain their archbishoprics and bishoprics, in as large and ample manner as if they had been promoted, elected, confirmed, and consecrated according to the due course of the laws of this realm; and that every archbishop and bishop of this realm, and of other the King's dominions, may minister, use, and exercise all and every thing and things pertaining to the office or order of an archbishop and bishop, with all tokens, ensigns, and ceremonies thereunto lawfully belonging.

A confirmation of all archbishops and bishops, and their authority, and other ecclesiastical persons and orders.

4. And that all ecclesiastical persons of the King's realm and dominions, which at this time be taken, had, and reputed for abbots, priors, abbesses, prioresses, and other heads of religion (which be not, neither shall be excluded from their dignities, by the late act of suppression), and the religious people living under their obedience, and all persons now taken and reputed as masters, presidents, provosts, and wardens of cathedral churches and colleges, with the companies and fellowships of the same, all priests and clerks which have received any of the ecclesiastical orders, all archdeacons and deans, and others having offices, cures, and dignities spiritual, may by authority of this act, and not by the virtue of any foreign power or authority, administer, use, and exercise all things pertaining to their dignities, offices, orders, cures, religions, and fellowships, and may lawfully hereafter use all tokens, ensigns, and ceremonies, which they have been accustomed to use in times past, so it be not expressly against the laws of God and this realm: any thing or things contained in any act or acts made sithen the beginning of this present parliament to the contrary of any of the premises in any wise notwithstanding.

5. And where divers and many of the King's said subjects have purchased and obtained many dispensations, bulls, breves, and faculties of the bishop of Rome

1536.

The effect and contents of bulls, breves, faculties, &c. purchased of the see of Rome, which are allowable, shall be confirmed under the great seal.

Rome for the time being, or by authority of the See of Rome, as pluralities, unions, trialities, appropriations, commendams, exemptions, and other bulls, breves, and faculties, for divers causes and matters, other than be afore expressed, which be of no strength or virtue: it may therefore please the King's Majesty, that it may be enacted by authority aforesaid, that all and every his said subjects, during the time of one whole year next after the feast of St. Michael the Archangel next coming, may enjoy, use, and have by authority of this present act, and not by virtue of the said bulls, breves, and faculties, all and every the effects contained and specified in such bulls, breves, and faculties, in all such cases only as may be dispensed with by the Archbishop of Canterbury, by authority of the laws and statutes of this realm.

6. And that it may be further enacted by authority aforesaid, that all and every the King's said subjects bringing, rendering, and delivering to such persons of his council, or of the masters of his chancery, as the King's Highness shall name and appoint, any bulls, breves, or any other faculties concerning any the premises, that then, if it shall appear to such persons as the King's Highness shall so name and appoint to receive such bulls, faculties, and breves, after due examination thereof had, that the effects contained and specified in such bulls, faculties, and breves, or any part thereof, may be lawfully granted by the said Archbishop of Canterbury, by authority of the laws and statutes of this realm; that then, and in every such case, the King's said subjects making humble suit to have the effects contained in the said bulls, breves, and faculties to be granted unto them, shall have, receive, and obtain of the Chancellor of England, or keeper of the great seal for the time being, by sufficient writing in due form to be made, and to be sealed under the King's great seal, all and every such effects contained and specified in such bulls, breves, and faculties, as may be lawfully granted by the said Archbishop of Canterbury, by authority of the laws and statutes of this realm, paying only for sealing of every such writing 20s. 4d. and over that, for the reasonable costs for pains of the writing thereof, 3s. 4d. and not above; and for the pain taken for due examination of every such bulls, breves, and faculties, 3s. 4d. and not above. And that this present act shall be sufficient and immediate warrant to the chancellor or keeper of the great seal for ensealing and delivery of such licenses, faculties, dispensations, and other writings which shall be made, granted, and sealed under the King's great seal, by virtue and authority of this act.

7. And it is also enacted by authority aforesaid, that all and every such license, dispensation, faculty, confirmation, or other writing, to be had, made, or granted under the King's great seal out of the said court of chancery, by authority of this act, in form as is above rehearsed, shall be good and effectual to the said parties suing for the same, according to the tenor and effects thereof, and shall be admitted, accepted, and allowed in all courts and places of this realm, and in all other the King's dominions: any usage, prescription, foreign laws, customs, or ordinance, to the contrary thereof notwithstanding.

1539.

How leases made of manors belonging to monasteries dissolved and assured to the King, shall take effect.

31 H. 8. c. 13. 1 Gw. 35.

WHERE divers and sundry abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of divers monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places within this our Sovereign Lord the King's realm of England and Wales, of their own free and voluntary minds, good wills, and assents, without constraint, coaction, or compulsion of any manner of person or persons, sithen the fourth day of February, the twenty-seventh year of the reign of our now most dread Sovereign Lord, by the due order and course of the common laws of this his realm of England, and by their sufficient writings of record under their covent and common seals, have severally given, granted, and by the same their writings severally confirmed all their said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and all their sites, circuits, and precincts of the same, and all and singular their manors, lordships, granges,

granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rights, entries, conditions, commons, leets, courts, liberties, privileges, and franchises, appertaining, or in any wise belonging to any such monastery, abbathy, priory, nunnery, college, hospital, house of friars, and other religious and ecclesiastical houses and places, or to any of them, by whatsoever name or corporation they or any of them were then named or called, and of what order, habit, religion, or other kind or quality soever they or any of them were then reputed, known, or taken; to have and to hold all the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses or places, sites, circuits, precincts, manors, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, to our said Sovereign Lord, his heirs, and successors for ever, and the same their said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and other the premises voluntarily, as is aforesaid, have renounced, left, and forsaken, and every of them have renounced, left, and forsaken:

2. Be it therefore enacted by the King our Sovereign Lord, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that the King our Sovereign Lord shall have, hold, possess, and enjoy to him, his heirs, and successors for ever, all and singular such late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, of what kinds, natures, qualities, or diversities of habits, rules, professions, or orders, they or any of them were named, known, or called, which, sith the said fourth day of February, the twenty-seventh year of the reign of our said Sovereign Lord, have been dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean, come to his Highness, and by the same authority, and in like manner shall have, hold, possess, and enjoy all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages appropriated, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises; and other whatsoever hereditaments which appertained or belonged to the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, or to any of them, in as large and ample manner and form as the late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of such late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, had, held, or occupied, or of right ought to have had, holden, or occupied in the right of their said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses and places, at the time of the said dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or by any other manner of mean coming of the same to the King's Highness sithen the fourth day of February above specified.

3. And it is further enacted by the authority aforesaid, that not only all the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, forthwith, immediately, and presently, but also all other monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and all other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come to the King's Highness; and also all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions,

Monasteries and their lands before surrendered or dissolved, given to the King.

All houses to be dissolved, and their lands given to the King.

1539.

The sites and lands of the monasteries shall be in the actual possession of the King.

All abbey lands shall be within the survey of the court of augmentations, except such which come by attainder.

Other men's titles saved.

sions, services, woods, tithes, pensions, portions, parsonages appropriate, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments, whatsoever they be, belonging, or appertaining to the same, or any of them, whensoever, and as soon as they shall be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come unto the King's Highness, shall be vested, deemed, and adjudged by authority of this present parliament, in the very actual and real seisin and possession of the King our Sovereign Lord, his heirs and successors, for ever, in the state and condition as they now be, and as though all the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and all other religious and ecclesiastical houses and places, so dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, as is aforesaid, as also the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, sites, circuits, precincts, manors, lordships, granges, lands, tenements, and other the premises, whatsoever they be, and every of them, were in this present act specially and particularly rehearsed, named, and expressed by express words, names, titles, and faculties, and in their natures, kinds, and qualities.

4. And be it also enacted by the authority aforesaid, that all the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which being dissolved, suppressed, renounced, relinquished, given up, or come to the King's Highness by any manner of means, as is aforesaid, and all the manors, lordships, granges, lands, tenements, and other the premises, (except such thereof as be come to the King's hands by attainder or attainders of treason,) and all the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses or places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, and all the manors, lordships, granges, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, portions, pensions, parsonages appropriate, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments, whatsoever they be, belonging to the same, or to any of them, (except such thereof which shall happen to come to the King's Highness by attainder or attainders of treason,) shall be in the order, survey, and governance of our said Sovereign Lord the King's court of augmentations of the revenues of his crown, and of the chancellors, officers, and ministers of the same; and all the farms, issues, revenues, and profits, coming and growing of the premises, and of every part thereof (except before except) shall be ordered, taken, and received for the King's use by the said chancellor, ministers, and officers, of the same court, in such and like manner and form as the monasteries, priories, sites, circuits, manors, granges, meases, lands, tenements, rents, reversions, services, tithes, pensions, portions, advowsons, patronages, rights, entries, conditions, and other hereditaments, late appertaining, or belonging unto the monasteries, abbathies, priories, or other religious houses, late by authority of parliament suppressed, been ordered, surveyed, and governed; saving to all and every person and persons, and bodies politic, and their heirs, and successors, and the heirs and successors of all and every of them (other than the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and their successors, and the successor of every of them, and such as pretend to be founders, patrons or donors of such monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments belonging to the same, or to any of them, their heirs and successors, and the heirs and successors of every such

1539.

such founder, patron or donor, and the new abbots, priors, abbesses, prioresses, and other ecclesiastical governors, and governesses of such monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's Highness, and such as pretend to be founders, patrons, or donors of such monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friars, and other ecclesiastical houses and places, of any manors, messuages, lands, tenements, or other hereditaments to the same belonging, or to any of them, their heirs and successors, and the heirs and successors of every of them, all such right, title, claim, interest, possession, rents, charges, annuities, leases, farms, offices, fees, liveries, and livings, portions, pensions, corrodiages, commons, synods, proxies, and other profits, which they or any of them have, claim, ought, may, or might have had, in or to the premises, or to any part or parcel thereof, in such like manner, form, and condition, to all intents, respects, constructions and purposes, as if this act had never been had ne made (rents-services, rents seck, and all other services and suits only except.)

Rents-services, rent seck, and other services and suits excepted out of the saving.

5. Provided always, and be it enacted by the authority aforesaid, that if any late abbot, prior, prioress, abbess, or other ecclesiastical governor, or governess abovesaid, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's Highness of his late monastery, abbath, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, hath made any lease or grant under his covent, or common seal, or otherwise, for term of life, or for term of years, of the site, circuit, and precinct of his said late monastery, abbath, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, or any part thereof, or of any manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, which belonged or appertained to his said late monastery, abbath, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, were not before the same lease commonly used to be set, nor let to farm, but kept and reserved in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping; or within one year, as is abovesaid, hath made any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof, or in which any estate or interest for term of life, year or years, at the time of the making of any such grant or lease, then had his being or continuance, and then was not determined, finished, or expired, or within the time of one year, as is abovesaid, has made any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, upon the which leases and grants, the usual and old rents and farms, accustomed to be yielded and reserved by the space of twenty years next before the first day of this present parliament, is and be not thereupon reserved and yielded; or if any such governor or governess has made any bargain or sale of his woods within one year, as is afore limited, which woods be yet growing and standing, that then all and every such lease, grant, bargain, and sale of wood or woods, shall be utterly void and of none effect.

Leases or grants made within a year, of lands not used to be let to farm.

Leases made in reversion within one year before the dissolution.

Leases made not reserving the old rent.

Wood sales within one year before the dissolution.

6. And it is also enacted by the authority aforesaid, that all feoffments, fines, and recoveries had, made, acknowledged, or suffered by any governor or governess, without the King's license under his great seal, within one year next before the dissolution, renouncing, relinquishing, forfeiting, giving up, or coming unto the King's Highness of his said monastery, abbath, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, of any manors, messuages, lands, tenements, or other hereditaments whatsoever

Feoffments, fines, and recoveries, acknowledged by abbots of lands, of the King's gift, or of their ancient possession.

soever

1539.

Leases of lands not usually let of such monasteries as hereafter shall be suppressed.

Lease of lands in lease.

Leases of abbey lands which are to be dissolved, not reserving the old rent.

Wood sales made or to be made within one year before the dissolution.

Assurances made by governors of houses of religion suppressed, of any of their lands within one year before.

soever they be, which the said late abbot, prior, abbess, prioress, and other ecclesiastical governor and governess, or any of them, or any of their predecessors had or held, of the gift, grant, or confirmation of our said Sovereign Lord, or any of his highness' progenitors, or of the which monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places our said Sovereign Lord was founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were of the ancient or old foundation or possession of the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect.

7. And it is further enacted by the authority aforesaid, that if any abbot, prior, abbess, prioress, or other ecclesiastical governor or governess of any monastery, abbathy, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's highness within one year next before the first day of this present parliament, have made or hereafter do make any lease or grant under his covent or common seal, or otherwise for term of years, or life or lives, of the site, circuit, and precinct of his said monastery, abbathy, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, or of any part thereof, or of any manors, messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments, belonging or appertaining to his said monastery, abbathy, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which manors, meases, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments, whatsoever they be, were not, before the same lease, commonly used to be set nor let to ferm, but kept and reserved in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping, or now be in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping; or, within one year next before the first day of this present parliament, hath made, or hereafter shall make any lease or grant for term of life, or for term of years, of any manors, meases, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof and in the which any estate or interest for term of life, year or years, at the time of the making any such grant or lease, then had his being or continuance, or hereafter shall have his being or continuance; and then was not determined, finished, or expired, or at the time of any such lease to be made, shall not be determined, finished, or expired; or within one year next before the first day of this present parliament hath made, or hereafter shall make any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, churches, chapels, or other hereditaments, whatsoever they be, upon which leases and grants the usual and old rents and fermis accustomed to be yelden and reserved by the space of twenty years next before the said first day of this present parliament, is or be not, or hereafter shall not be thereupon reserved and yelden; or if any such governor or governess of any such monastery, abbathy, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's highness, within one year next before the first day of this present parliament, hath made, or hereafter shall make any bargain or sale of his woods, which woods be yet growing and standing, that then all and every such lease, grant, bargain and sale of wood or woods, shall be utterly void and of none effect.

8. And it is also enacted by the authority aforesaid, that all feoffments, fines, and recoveries had, made, knowledged, or suffered within one year next before the first day of this present parliament, or hereafter to be had, made, knowledged, or suffered by any governor or governess of any monastery, abbathy, priory, nunnery, college, hospital, house of friars, or other religious or ecclesiastical

1539.

astical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's highness, without the King's license under his great seal, of any manors, meases, lands, tenements, or other hereditaments, whatsoever they be, which the said abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, which hereafter shall happen to be dissolved, suppressed, relinquished, forfeited, given up, or come unto the King's highness, as is aforesaid, or any of them, or any of their predecessors had or held, or have and hold, of the gift, grant, or confirmation of our said Sovereign Lord, or of any of his highness' progenitors; or of the which monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses and places, our said Sovereign Lord is founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were or be of the ancient or old foundation or possession of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect.

9. Provided always, and be it enacted by authority aforesaid, that if any abbot, prior, abbess, or prioress, or other governor or governess abovesaid, within one year next before the first day of this present parliament; or of any late abbot, prior, abbess, prioress, or other late governor or governess abovesaid; within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's highness, of the premises, or of any parcel thereof, as is aforesaid, have made any demise, lease, or grant, to any person or persons for term of years, of any manors, meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, which person or persons, at the time of the said demise, lease, or grant, had and held the same to term for term of years then not expired; that then the said person or persons, to whom any such demise, lease, or grant, hath been so made, shall have and hold the same for the term of one and twenty years only, from the time of the making of the said demise, lease, or grant, if so many years be by the same demise, lease, or grant specified, limited, and expressed, or else for so many years as in such demise, lease, or grant, been expressed, so that the old rent be thereupon reserved, and so that the same lease or leases exceed not twenty-one years; this act, or any thing therein contained to the contrary notwithstanding.

A lease for years made to the old lessee for years within a year before the dissolution, or of this parliament.

10. Provided also, and be it enacted by the authority aforesaid, that if any abbot, prior, abbess, prioress, or other late governor or governess, within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the King's highness, of the premises, or of any parcel thereof, as is aforesaid, have made any demise, lease, or grant to any person or persons, for term of life or lives, of any manors, meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, which person or persons, or any of them, at the time of the said demise, lease, or grant, had and held the same for term of life or lives, or for term of years then not expired; that then the said person or persons, to whom any such lease or grant hath been so made, shall have and hold the same for term of their life or lives, so that the old rent be thereupon reserved; this act, or any other thing therein contained to the contrary thereof notwithstanding.

A lease for life made to the old lessee for life or years.

11. Provided also, and be it enacted by the authority aforesaid, that all and singular leases and grants, made by copy to any person or persons, of any of the said messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, for term of life or lives, which by the custom of the country has been used to be demised, letten, or granted by copy of court-roll, shall be good and effectual in the law, so that the old rent be reserved by and upon every such lease and leases; this act, or any thing therein contained to the contrary in anywise notwithstanding.

All copies for life granted according to the custom shall be good.

12. Provided alway, and be it further enacted by the authority aforesaid, that all leases heretofore made of any of the premises by authority of our Sovereign Lord the King's court of augmentations of the revenues of his crown, and

Leases allowed in the court of augmentations.

all

1539.

all such leases, feoffments, and wood sales, made by the said governors and governesses, or any of them, under their covent seals, or under the covent or common seal of any of them, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's highness, of the said monasteries, abbatbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, which said leases, grants, feoffments, and wood sales have been examined, enrolled, decreed, or affirmed in our said Sovereign Lord the King's court of augmentations, and the decree of the same put in writing, sealed with the seal of the said court of augmentations, shall be good and effectual according to the same decree; any clause or act heretofore in this present act to the contrary notwithstanding.

How they shall be relieved who have truly paid money for wood to any ecclesiastical governor.

13. Provided always, and be it also further enacted by the authority aforesaid, that if any person or persons have justly and truly, without fraud or covin, paid or given in any sum or sums of money to any of the said late governors and governesses, for the bargain and sale of any woods, being or growing in or upon any manors, lands, tenements, or hereditaments, which appertained or belonged to the said late monasteries, abbatbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical places, or unto any of them, which bargain and sale, by authority of this act, is made void and of none effect, and by mean thereof the King's highness may have and take the commodity and profit of such woods so bargained and sold; that then the chancellor and other officers of our said Sovereign Lord the King's Court of Augmentations, or three of them, whereof the chancellor for the time being shall be one, of our said Sovereign Lord the King's treasure remaining in the treasury of the same court, shall satisfy and recompense every such person or persons such sum of money, or other recompense, as the same chancellor and officers, or three of them, whereof the said chancellor shall be one, shall think meet and convenient. And if any other person or persons shall happen to take profit and commodity, by reason of avoiding of such wood-sales by authority of this act, that then every person and persons, which may or shall take such profit, shall be ordered for satisfaction to be made to the parties that shall happen to be grieved by this act, by the said chancellor and other the officers of the same court.

Assurance to others by the King's license of any abbey lands.

14. Provided also, and be it further enacted by the authority aforesaid, that all and every person and persons, their heirs, and assigns, which since the said fourth day of February, by license, pardon, confirmation, release, assent, or consent of our said Sovereign Lord the King, under his great seal heretofore given, had, or made, or hereafter to be had or made, have obtained or purchased by indenture, fine, feoffment, recovery, or otherwise, of the said late abbots, priors, abbesses, prioresses, or other governors, or governesses of any such monasteries, abbatbies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses or places, any monasteries, priories, colleges, hospitals, manors, lands, tenements, meadows, pastures, woods, churches, chapels, parsonages, tithes, pensions, portions, or other hereditaments, shall have and enjoy the same, according to such writings and assurances as been thereof before the first day of this present parliament, or hereafter shall be had or made.

A saving of the right of others accrued unto them before the said purchase.

15. Saving to all and every person and persons, and bodies politic, their heirs, and successors, and the heirs and successors of every of them (other than the said late abbots, abbesses, priors, prioresses, and other governors, and governesses, and their successors, and the successors of every of them, and such as pretend to be founders, patrons, or donors of the monasteries, abbatbies, priories, nunneries, colleges, hospitals, and other religious or ecclesiastical houses or places, or of any of them, or of any manors, messuages, lands, tenements, or other hereditaments late belonging to the same, or to any of them, and their heirs, successors, and the heirs and successors of every such founder, patron, or donor, all such right, title, interest, possession, rents, annuities, commodities, offices, fees, liveries, and livings, portions, pensions, corrodies, synods, proxies, or other profits, which they or any of them have, ought, or might

might have had, in or to any of the said monasteries, abbathies, priories, colleges, hospitals, manors, lands, tenements, rents, services, reversions, tithes, pensions, portions, or other hereditaments; at any time before any such purchase, indentures, fines, feoffments, recoveries or other lawful mean between any such parties had or made, as is aforesaid: this act, or any thing therein contained to the contrary notwithstanding.

16. And where our said Sovereign Lord, sith the fourth day of February, the said twenty-seventh year of the reign of our said Sovereign Lord, hath obtained and purchased, as well by exchanges, as by gifts, bargains, fines, sundry feoffments, recoveries, deeds enrolled, and otherwise, of divers and sundry persons, many and divers honours, castles, manors, lands, tenements, meadows, pastures, woods, rents, reversions, services, and other hereditaments, and hath not only paid divers and sundry great sums of money for the same, but also has given and granted for the same, unto divers and sundry persons, divers and sundry manors, lands, tenements, and hereditaments, and other recompenses in and for full satisfaction of all such honours, castles, manors, lands, tenements, rents, reversions, services, and other his hereditaments, by his Highness obtained, or had, as is abovesaid: Be it therefore enacted by the authority aforesaid, that our said Sovereign Lord the King, his heirs, and successors, shall have, hold, possess, and enjoy all such honours, castles, manors, lands, tenements, and other hereditaments, as his Highness sith the said fourth day of February, the twenty-seventh year abovesaid, has obtained and had by way of exchange, bargain, purchase, or other whatsoever, mean or means, according to the true meaning and intent of his Highness's bargain, exchange, or purchase, misrecital, misnaming, or nonrecital, or not naming of the said honours, castles, manors, lands, tenements, and other hereditaments comprised or mentioned in the bargains or writings made between the King's Highness, and any other party or parties, or of the towns or counties where the said honours, castles, manors, lands, tenements, and hereditaments lie and been, or any other matter or cause whatsoever it be, in anywise notwithstanding.

A confirmation
of the King's
purchases made
since 4 Feb.
Ann. 27 H. 8.

17. Saving to all and every person and persons, and to their heirs, bodies politic and corporate, and to their successors, and to every of them (other than such person and persons, and their heirs, and their wives, and the wives of every of them, bodies politic and corporate, and their successors, and every of them, of whom the King's Highness has obtained by exchange, gift, bargain, fine, feoffment, recovery, deed enrolled, or otherwise, any such honours, castles, manors, lands, tenements, and other hereditaments, as is aforesaid) all such right, title, use, interest, possession, rents, charges, annuities, commodities, fees, and other profits (rents services, and rents seck only except) which they or any of them have, might, or ought to have had, in or to the premises so obtained and had, or in or to any parcel thereof, if this act had never been had nor made; this present act, or any thing therein contained to the contrary notwithstanding.

A saving of
rights.

An exception of
rents services,
rents seck.

18. And where it has pleased the King's Highness of his most abundant grace and goodness, as well upon divers and sundry considerations his Majesty specially moving, as also otherwise to have bargained, sold, changed, or given, and granted by his Grace's several letters-patent, indentures, or other writings, as well under his Highness's great seal, as under the seal of his Highness's duchy of Lancaster, and the seal of the office of the augmentations of his crown, unto divers and sundry of his loving and obedient subjects, divers and sundry honours, castles, manors, monasteries, abbathies, priories, lands, tenements, rents, reversions, services, parsonages appropriate, advowsons, liberties, tithes, oblations, portions, pensions, franchises, privileges, liberties, and other hereditaments, commodities, and profits, in fee-simple, fee-tail, for term of life, or for term of years; for avoiding of which said letters-patent, and of the contents of the same, divers, sundry, and many ambiguities, doubts, and questions might hereafter arise, be moved, and stirred, as well for misrecital, or nonrecital, as for divers other matters, things, or causes to be alleged, objected, or invented against the said letters-patent, as also for lack of finding of offices or inquisitions, whereby the title of his Highness therein ought to have been found,
before

1539.

before the making of the same letters-patent, or for misrecital, or nonrecital of leases, as well of record, as not of record, or for lack of the certainty of the values, or by reason of misnaming of the honours, castles, manors, monasteries, abbathies, priories, lands, tenements, and other hereditaments comprised and mentioned within the same letters-patent, or of the towns and counties where the same honours, castles, manors, monasteries, abbathies, priories, lands, tenements, rents, and other hereditaments lien and been, as for divers and sundry other suggestions and surmises, which hereafter might happen to be moved, surmised, and procured against the same letters-patent, albeit the words in effect contained in the said letters-patent be according to the true intent and meaning of his most royal Majesty.

The King's patents sufficient notwithstanding misrecital, not finding of offices, &c.

19. Be it therefore enacted by the authority of this present parliament, that as well all and every the said letters-patent, indentures, and other writings, and every of them, under the seal or seals abovesaid, or of any of them, made or granted by the King's highness since the said fourth day of February, the said twenty-seventh year of his most noble reign, as all and singular other his Grace's letters-patent, indentures, or other writings to be had, made, or granted to any person or persons within three years next after the making of this present act, of any honours, castles, manors, monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or of other religious or ecclesiastical houses or places, sites, circuits, precincts, lands, tenements, parsonages, tithes, pensions, portions, advowsons, nominations, and all other hereditaments, and possessions, of what kind, nature, or quality soever they be, or by whatsoever name or names they or any of them be named, known, or reputed, shall stand and be good, effectual, and available in the law of this realm, to all respects, purposes, constructions, and intents, against his Majesty, his heirs, and successors, without any other license, dispensation, or tolerance of the King's highness, his heirs, and successors, or of any other person or persons whatsoever they be, for any thing or things contained, or hereafter to be contained, in any such letters-patent, indentures, or other writings; any cause, consideration, or thing material to the contrary in anywise notwithstanding.

A saving of the right of others in the lands assured by the King.

20. Saving to all and singular persons, bodies politic and corporate, their heirs, and successors, and the heirs and successors of every of them (other than his Highness, his heirs, and successors, and the said governors, and governesses, and their successors, donors, founders, and patrons, aforementioned, and their heirs, and successors, and all other persons claiming in their rights, or to their use, or in the right, or to the use of any of them) all such right, title, claim, interest, possession, reversion, remainder, offices, annuities, rent charges, and commons, which they or any of them have, ought, or might have had, in or to any of the said honours, castles, manors, monasteries, abbathies, priories, lands, tenements, and other hereditaments in the said letters-patent, made, or hereafter to be made, comprized at any time before the making of the said such letters-patent; this act, or any thing therein contained to the contrary notwithstanding.

Such abbey lands as before the dissolution of them were discharged of tithes, shall so continue.

21. And where divers and sundry abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses, and places, have had, possessed, and enjoyed divers and sundry parsonages appropriated, tithes, pensions, and portions, and also were acquitted and discharged of and for the payment or payments of tithes, to be paid out or for their said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, manors, messuages, lands, tenements, and hereditaments: Be it therefore enacted by the authority abovesaid, that as well the King our Sovereign Lord, his heirs, and successors, as all and every such person and persons, their heirs, and assigns, which have, or hereafter shall have any monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other ecclesiastical houses or places, sites, circuits, precincts of the same, or any of them, or any manors, messuages, parsonages appropriate, tithes,

tithes, pensions, portions, or other hereditaments, whatsoever they be, which belonged or appertained, or which now belong or appertain unto the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious and ecclesiastical houses or places, or unto any of them, shall have, hold, retain, keep, and enjoy, as well the said parsonages appropriate, tithes, pensions, and portions, of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, meases, lands, tenements, and other hereditaments whatsoever they be, and every of them, according to their estates, and titles, discharged, and acquitted of payment of tithes, as freely, and in as large and ample manner as the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, or any of them had, held, occupied, possessed, used, retained, or enjoyed the same, or any parcel thereof, at the days of their dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's highness, of such monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other religious or ecclesiastical houses or places, or at the day of the dissolution, suppression, renouncing, relinquishing, giving up, or coming to the King's highness of any of them, this act, or any thing therein contained to the contrary notwithstanding.

22. Saving to the King's highness, his heirs, and successors, all and all manner of rents, services, and other duties whatsoever they be, as if this act had never been had nor made.

All rents services, &c. reserved to the King.

23. And be it further enacted by authority of this present parliament, that such of the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, and all churches and chapels to them, or any of them belonging, which before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the King's highness, were exempted from the visitation or visitations, and all other jurisdiction of the ordinary or ordinaries, within whose diocese they were situate or set, shall from henceforth be within the jurisdiction and visitation of the ordinary or ordinaries within whose diocese they or any of them be situate and set, or within the jurisdiction and visitation of such person or persons, as by the King's highness shall be limited or appointed; this act, or any other exemption, liberty, or jurisdiction to the contrary notwithstanding.

Monasteries, &c. exempt from visitations and jurisdiction of the ordinary.

24. And where before this time it hath pleased the King's majesty, at the contemplation and humble petition of the right noble Thomas Duke of Norfolk, to give his royal assent and license by his grace's word, without any manner of letters-patent, or other writing, to purchase and receive to him and to his heirs for ever, of William Flatbury late abbot of the monastery of Sipton in the county of Suffolk, and convent of the same late monastery now being dissolved, all the same monastery, together with all and singular manors, lordships, lands, tenements, woods, waters, commons, courts-leets, advowsons, patronages, parsonages, vicarages, chantries, free chapels, tithes, portions of tithes, pensions, annuities, rents, suits, services, reversions, remainders, and all other things which were the hereditaments or the possessions of the said late monastery, wheresoever they lay or were within the realm of England. And in like wise our said Sovereign Lord gave license by his grace's word, unto the right honourable George Lord Cobham, to purchase and receive to him and to his heirs for ever, of the late master and brethren of the college or chantry of Cobham in the county of Kent, now being utterly dissolved, the site of the same college or chantry, and all and singular their hereditaments and possessions, as well temporal as ecclesiastical, wheresoever they lay or were within the realm of England.

Duke of Norfolk.

Sipton abbey.

Lord Cobham.
Cobham chantry.

25. Be it therefore enacted by the authority of this present parliament, that the act above written, or any thing therein contained, shall not be in anywise prejudicial or hurtful to the said duke and Lord Cobham, or to either of them, or to the heirs or assigns of either of them, but that the same duke and Lord Cobham, and either of them sundrily, and the heirs and assigns of either of them,

1539.

them, shall and may have, hold, receive, and enjoy the premises by them sundrily purchased or received, according to the purports and effects of such evidences, writings, and conveyances, as they or any of them sundrily have caused to be devised and made to them or to their uses for the same.

Saving of other men's rights in the monastery of Sipton and Cobham chantry.

26. Saving always, and reserving to all and singular persons, and bodies politic, and to their heirs and successors, (other than the said late abbot and convent, and their successors, and the said late master and brethren, and their successors, and the founders of the said monastery, or of the college or chantry, and the heirs of either of them, and all donors, granters, or augmenters of them, or of either of them, and the heirs and assigns of either of them,) all such rights, titles, possessions, rents, services, fees, offices, and annuities, corrodies, liveries, leases, and all other such their interests, profits, and commodities, as they or any them had, should or ought to have of, to, or in any of the premises sundrily purchased or received by the said duke or Lord Cobham, if this present act had never been had or made; any thing in the same act to the contrary being in anywise notwithstanding.

1540.

32 H. 8. c. 7. 1 Gw. 43.

This act is confirmed and enlarged by 2 & 3 Ed. 6. c. 13.

WHERE divers and many persons inhabiting in sundry countries and places of this realm, and other the King's dominions, not regarding their duties to Almighty God, and to the King our Sovereign Lord, but in few years past more contemptuously and commonly presuming to offend and infringe the good and wholesome laws of this realm, and gracious commandments of our said Sovereign Lord, than in times past has been seen or known, have not letted to subtract and withdraw the lawful and accustomed tithes of corn, hay, pasturages, and other sort of tithes, and oblations commonly due to the owners, proprietaries, and possessors of the parsonages, vicarages, and other ecclesiastical places of and within the said realm and dominions, being the more encouraged thereto, for that divers of the King's subjects, being lay persons, having parsonages, vicarages, and tithes to them, and to their heirs, or to them, and to their heirs of their bodies lawfully begotten, or for term of life, or years, cannot by the order and course of the ecclesiastical laws of this realm, sue in any ecclesiastical court for the wrongful withholding and detaining of the said tithes, or other duties, nor cannot by the order of the common laws of this realm have any due remedy against any person or persons, their heirs or assigns, that wrongfully detaineth or withholdeth the same; by occasion whereof much controversy, suit, variance, and discord is like to insurge and ensue among the King's subjects, to the great detriment, damage and decay of many of them, if convenient and speedy remedy therefore be not had and provided:

Tithes shall be paid according to the custom of the parish where they are due.

2. Wherefore it is ordained and enacted by our said Sovereign Lord the King, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that all and singular persons of this his said realm, or other dominions, of what estate, degree, or condition soever he or they be, shall fully, truly, and effectually divide, set out, yield, or pay all and singular tithes and offerings aforesaid, according to the lawful customs and usages of parishes and places where such tithes or duties shall grow, arise, come, or be due; and in case that shall happen any person or persons, of his or their ungodly or perverse will and mind, to detain and withhold any of the said tithes or offerings, or any part or parcel thereof, then the person or persons, being ecclesiastical or lay person, having cause to demand or have the said tithes or offerings, being thereby wronged or grieved, shall and may convent the person or persons so offending before the ordinary, his commissary, or other competent minister, or lawful judge of the place where such wrong shall be done, according to the ecclesiastical laws; and in every such cause or matter of suit, the same ordinary, commissary, or other competent minister, or lawful judge, having the parties, or their lawful procurators before him or them, shall and may by virtue of this act proceed to the examination, hearing, and determination of every such cause or matter ordinarily

Offenders convicted before the ordinary.

dinarily or summarily, according to the course and process of the said ecclesiastical laws, and thereupon may give sentence accordingly.

1540.

3. And in case that any of the parties, for any cause or matter concerning that suit, do appeal from the sentence, order, and definitive judgment of the said ordinary, or other competent judge, as is aforesaid, then the same judge, by virtue of this act, forthwith upon such appellation made, shall adjudge to the other party the reasonable costs of his suit therein before expended, and shall compel the same party appellant to satisfy and pay the same costs so adjudged by compulsory process, and censures of the said laws ecclesiastical, taking surety of the other party to whom such costs shall be adjudged and paid, to restore the same costs to the party appellant, if after the principal cause of that suit of appeal shall be adjudged against the same party to whom the same costs shall be yielded; and so every ordinary or other competent judge ecclesiastical, by virtue of this act, shall adjudge costs to the other party upon every appeal to be made in any suit or cause of subtraction, or detention of any tithes, or offerings, or in any other suit to be made for or concerning the duty of such tithes or offerings.

The appellant shall pay costs of suit to the other party.

4. And further be it enacted by the authority aforesaid, that if any person or persons, after such sentence definitive given against them, obstinately and wilfully refuse for to pay their tithes, or duties, or such sums of money so adjudged, wherein they be condemned for the same, that then two justices of the peace for the same shire, whereof one to be of the quorum, shall have authority by this act, upon information, certificate, or complaint to them made in writing by the said ecclesiastical judge that gave the same sentence, to cause the same party so refusing, to be attached, and committed to the next gaol, and there to remain without bail or mainprize, till he or they shall have found sufficient sureties to be bound by recognizance, or otherwise, before the same justices, to the use of our Sovereign Lord the King, to perform the said definitive sentence and judgment.

Offenders shall be bound by two justices of peace to obey the ordinary's sentence.

5. Provided always, and be it enacted by the authority aforesaid, that no person or persons shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes, for any manors, lands, tenements, or hereditaments, which by the laws or statutes of this realm are discharged, or not chargeable with the payment of any such tithes.

Lands discharged of tithes.

6. Provided also, and be it enacted by authority aforesaid, that this act, nor any thing therein contained, shall in anywise bind the inhabitants of the city of London, and suburbs of the same, for to pay their tithes and offerings within the same city and suburbs otherwise than they ought or should have done before the making of this act; any thing in this act contained to the contrary notwithstanding.

The inhabitants of London.

7. And be it further enacted by the authority aforesaid, that in all cases, where any person or persons which now have, or which hereafter shall have any estate of inheritance, freehold, term, right, or interest, of, in, or to any parsonage, vicarage, portion, pension, tithes, oblations, or other ecclesiastical or spiritual profit, which now be, or which hereafter shall be made temporal, or admitted to be, abide, and go to or in temporal hands, and lay uses, and profits by the law or statutes of this realm, shall hereafter fortune to be disseised, deforced, wronged, or otherwise kept or put from their lawful inheritance, estate, seisin, possession, occupation, term, right, or interest of, in, or to the same, or of, in, or to any parcel thereof, by any other person or persons claiming or pretending to have interest or title in or to the same; that then in all and every such case or cases, the person or persons so disseised, forced, or wrongfully kept or put from his or their right or possession, as is afore rehearsed, their heirs, wives, and such other to whom such injury and wrong shall be done or committed, shall and may have their remedy in the King's temporal courts, or other temporal courts, as the case shall require, for the recovery, getting, or obtaining of such inheritance, estate, freehold, seisin, possession, term, right of interest, by writs original of *præc' quod reddat*, assise of novel disseisin, *mortdanc' quod ei deforciat*, writs of dower, or other writs original, as the case shall require, to be devised and granted in the King's

Recoveries may be had, and conveyances made in temporal courts, of tithes, as of lands.

1540.

Judgments
given, and fines
levied in the
King's courts,
of tithes, shall
be of like force
as of lands.

Remedy shall
be had for tithes
and offerings in
the spiritual
courts, and not
in the temporal.

Court of Chancery, of every such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual, so to be demanded according to the nature and cause of the suit thereof, in like manner and form as they should, ought, or might have had, of or for lands, tenements, or other hereditaments in such manner to be demanded: and that writs of covenant and other writs for fines to be levied, and all other assurances to be had, made, or conveyed, of any such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual, as is aforesaid, shall be hereafter devised and granted in the said Chancery according as has been used for fines to be levied, and assurance to be had or made, or conveyed, of lands, tenements, or other hereditaments: and that all judgments to be given upon any of the said writs original, so to be devised or granted of or for any the premises, or any of them, and all fines to be levied and acknowledged in any of the King's said courts thereof, shall be of like force and effect in the law, to all intents and purposes, as judgments given, and fines levied of lands, tenements, and hereditaments in the same courts upon writs original therefore duly pursued and prosecuted, albeit no such form of writs original out of the said Court of Chancery have heretofore proceeded or been awarded.

8. Provided always, that this last act shall not extend nor be expounded to give any remedy, cause of action or suit in the courts temporal against any person or persons which shall refuse or deny to set out his or their tithes, or which shall detain, withhold, or refuse to pay his tithes or offerings, or any parcel thereof; but that in all such cases the person or party, being ecclesiastical or lay person, having cause to demand or have the said tithes or offerings, and thereby wronged or grieved, shall take and have their remedy for their said tithes or offerings in every such case in the spiritual courts, according to the ordinance in the first part of this act mentioned, and not otherwise; any thing herein expressed to the contrary thereof notwithstanding.

32 H. 8. c. 20.

The same franchises that the late owners of religious houses had within three months before their dissolutions shall be revived, and be actually in the King, and in the survey of the Court of Augmentations.

WHERE divers and sundry sites, circuits, and precincts, of late monasteries, abbaties, priories, nunneries, colleges, hospitals, and other ecclesiastical and religious houses, and places, and divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, by divers and sundry statutes heretofore made, been assigned, limited, and appointed to the order, rule, survey, and governance of the court of our Sovereign Lord the King, called the Court of Augmentations of the Revenues of his Crown, and of the chancellor, officers, and ministers of the same, by the which statute it is not fully, plainly, nor expressly declared, or rehearsed how, and in what wise, and by what special officers and ministers, the liberties, privileges, and franchises, which the late owners of the same sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises, had, used, and exercised, should be ordered, used, and put in execution: be it therefore enacted by the King our Sovereign Lord, with the assent of the lords spiritual and temporal, and of the commons, of this present parliament assembled, and by the authority of the same, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the said late owners had, used, and exercised lawfully, by themselves, or by their officers, or ministers, or might have used or exercised within three months next before that the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other premises, came to the possession of the King's Highness, shall be by virtue of this present act revived, and be really and actually in the King's Highness, his heirs, and successors, and shall be in the rule, order, survey, and governance of the King's said Court of Augmentations of the Revenues of his Crown, and of the chancellor, officers, and ministers of the same: and that the liberties, franchises, privileges, and temporal jurisdictions, and all manner fines, issues, amerciements, and other profits and commodities of what kinds or natures soever they be, coming, growing, or rising by reason or occasion of them, or any of them, shall be used, exercised, and

and occupied to all intents, purposes, conditions, and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers and ministers as shall please the King's Highness to name and appoint, in like manner, form, fashion, and condition as they, or any of them were lawfully used, exercised, executed, claimed, levied, collected, and taken, before that they came to the hands and possession of our said Sovereign Lord; and that the same stewards, bailiffs, officers and ministers shall be accomptant for the issues and revenues of their bailiwicks, and offices, and shall be compelled to account in the said Court of Augmentations, like as the King's receivers, or other officers accomptants in the said court heretofore have done or ought to do.

2. And where also divers and sundry sites, circuits, and precincts of late monasteries, abbeys, priories, nunneries, colleges, hospitals, and other ecclesiastical and religious houses and places, and also divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, which been comen to the King's hands by attainder or attainders of high treason, been assigned, limited, and appointed to the order, rule, survey, and governance of the King's general surveyors; and forasmuch as it is not fully, plainly, nor expressly known or declared, how, and in what wise, and by what special officers or ministers, the temporal liberties, privileges, franchises, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises, had, used, and exercised, should be ordered, used and put in execution: Be it therefore enacted by authority aforesaid, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, and other the premises, which been come into the King's hands by attainders, as is aforesaid, lawfully had, used, and exercised by themselves, or by their officers or ministers, or which they might have used or exercised within three months next before that the same sites, circuits, precincts, honours, castles, manors, and other the premises, came to the possession of the King's Highness, shall be by virtue of this act revived, and be really and actually in the King's Highness, his heirs, and successors, and shall be in the rule, order, survey, and governance of the King's said general surveyors, and of the officers and ministers of the same; and that the same liberties, franchises, privileges, and temporal jurisdictions, and all manner of fines, issues, amerciaments, and other profits and commodities, of what kinds or natures soever they be, coming, growing, or rising by reason or occasion of them, or any of them, shall be used, exercised, and executed to all intents, purposes, conditions, and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers, and ministers as shall please the King's Highness to name and appoint for the same, in like manner, form, fashion and condition as they or any of them were used, exercised, executed, claimed, levied, collected, and taken before they came to the hands and possession of our said Sovereign Lord by attainder, as is aforesaid; and that the said stewards, bailiffs, officers, and ministers thereof, shall be accomptant for the issues, and revenues of their bailiwicks and offices, and shall be compelled to account before the said general surveyors, as other officers accomptants in that court heretofore have done, or ought to do.

Those lands, &c. of the late abbeys, which came to the King by attainder, shall be in the order of the court of general surveyors.

3. And be it enacted by authority aforesaid, that the said stewards, bailiffs, and other officers and ministers, shall be attendant and obedient to all other the King's courts, as well for all executions and returns of writs, warrants, and precepts, as for their personal appearances, and other duties of their offices, like as the officers and ministers of the said late owners did and ought to do, or should have done by reason of their said several offices, before that the same liberties, privileges, and temporal jurisdictions did come to the possession of our said Sovereign Lord, and that to be done and observed upon all pains and penalties by the laws of this realm limited and ordained for any offence or default in the same: and that no sheriff, under-sheriff, or other officer or minister of any sheriff, or other foreign officer or minister shall in any wise intromit

The jurisdiction of the stewards and bailiffs of those liberties that were late the abbeys, &c. and their attendance to the King's courts.

1540.

Every person may use such liberties as he has by the King's grants, or otherwise.

A saving to all persons their offices, fees, annuities, and profits out of any of the lands of any abbeyes, &c.

Fines may be levied in the Court of Augmentations to the King.

Inrolments in the Court of Augmentations of all deeds made to the use of the King, and of all obligations.

intrōmit or meddle in, with, or upon any of the premises, or otherwise, or in any other manner, nor for any other cause, than they or any of them lawfully might have done before the same premises did come to the possession of our Sovereign Lord.

4. Provided always, and be it enacted, that all and singular persons, and bodies politic, and the heirs, successors, and assigns of every of them, shall have, hold, use, execute, and exercise as well by themselves, their officers, servants, and ministers, as by and for their tenants, farmers, resiants, all and singular liberties, privileges, and franchises, which they or any of them now have, by or from the King's Majesty by any letters-patent, indentures, writings under any his Highness seal, or by authority of parliament, or otherwise, or by the lawful grant or lease of any person or persons, or by any other means or lawful title, in as large, ample, and beneficial manner, to all intents, respects, and purposes, as they or any of them, now have, or of right ought to have, the said liberties, franchises, and privileges, or any of them, and as though this act had never been had nor made; any thing above-written notwithstanding, (the privileges of sanctuaries, church, churchyards, or cemeteries for tuition of transgressors and offenders only excepted;) saving to all and singular persons and bodies politic, and the heirs, successors, and assigns of every of them, all such office and offices, fees, annuities, profits, and commodities, which they or any of them now have, or of right ought to have, in, or upon, or by reason of the said sites, circuits, precincts, castles, honours, manors, messuages, lands, tenements, liberties, franchises, privileges, and other the premises, or in any part or parcel of them, in as large and ample manner, form, fashion, and condition, to all respects and purposes, as if this act had never been had nor made; any thing in this act to the contrary thereof notwithstanding.

5. And furthermore, be it enacted by the authority of this present parliament, that the chancellor of the said Court of Augmentations now being, and every of his successors, being chancellor of that Court, and the King's attorney-general, and his Grace's attorney of the said Court of Augmentations for the time being, and every of them, and their successors, and the successors of every of them, shall have full power and authority, by virtue of this act, to take to the use of the King our Sovereign Lord, his heirs and successors, knowledges of all manner of concords for fines thereupon to be had and recorded in the court of our said Sovereign Lord the King, and of his heirs and successors, commonly called the common place, of and upon all and singular manors, lordships, lands, tenements, and other hereditaments, being, and which, by reason of those fines or otherwise, shall be under the order, rule, or survey of the said court of augmentations, without any fine or fee to be paid for the same; and that the judges and justices for the time being, of the said court called the common place, and their successors, shall accept, receive, and allow all the said knowledges of concord by the said chancellor and attorneys, or any of them, to be certified and delivered unto the said court called the common place.

6. And the same to be as effectual in the law to all intents and purposes, as if the same knowledges of concords had been made, taken or acknowledged, before the chief judge of the said common place out of the same court, or openly in that court; and also that the said chancellor and attorneys for the time being, and every of them, and the successors of every of them, shall have full power and authority to take knowledge for inrolments of all deeds made or to be made to the use of the King our Sovereign Lord, his heirs and successors, of any manors, lands, and tenements, and of all obligations to be made to the King, his heirs and successors, or to any other person or persons, to his or their use, for any matter or cause concerning the said court of augmentations, or concerning the said manors, lands, and tenements, without any fee, gift, or reward, by them or any of them to be taken therefore; and the same deed, so acknowledged, to be inrolled or registered in the said Court of Augmentations, and so being there inrolled or registered amongst other records there remaining, and the inrolments and registrations of the same, to stand and be of record, and of as good strength and effect, as if the same were or had been acknowledged

ledged before any other judge or justice of record, and inrolled in any other court of record.

1540.

7. Provided alway, and be it enacted by the authority aforesaid, that in all such of the said liberties, franchises, and places privileged, and in every of them limited to the said court of augmentations, and to the surveyors court, where-soever the King's Highness in his own most royal person shall come to rest, tarry, abide, or make his repose within this his realm, or any of his dominions, within liberty or without, there and within the verge limited and accustomed to his grace's court during the time of his abode; the steward or great master of his grace's household, the marshal, coroner, clerk of the market, and all other his ministers, shall and may keep their courts for justice, and exercise their office and offices, as shall appertain to them according to the laws, customs and statutes of this realm, as well within liberties and franchises as without: and that his grace's clerk of the market, and none other, during the same time, as well within the said liberties and franchises as without, shall exercise the office of clerk of the market within the said verge, any privilege, grant, allowance, or other thing to the contrary thereof notwithstanding.

The King's officers may keep court within the verge, and his clerk of the market only execute his office there.

8. Provided alway, that this article next above rehearsed, or any thing therein contained, be not in anywise prejudicial to the city of London; but that the same city shall have and use such liberties as they might if that article had never been had ne made.

The liberties of the city of London reserved.

9. And where also the sites, circuits, and precincts of the late monastery of Furnes, and of the late monasteries and priories of Cartemele, Coningshead, Bustough, and Holland; and also divers honours, castles, manors, messuages, lands, tenements, liberties, privileges, franchises, and other hereditaments, late parcel and appertaining to the said late monasteries and priories, or to any of them, which been comen into the King's hands, been assigned, limited, and appointed to the order, rule, survey, and governance of the chancellor, officers, and ministers of the county palatine and dutchy of Lancaster: and forasmuch as it is not fully, plainly, nor expressly known or declared, how and in what wise, and by what special officers and ministers, the temporal liberties, privileges, franchises, and temporal jurisdictions, which the late owners of the said sites, circuits, precincts, honours, castles, manors, messuages, lands, tenements, and other the premises, had, used, or exercised, should be ordered, used, and put in execution:

10. Be it therefore enacted by the authority aforesaid, that all and singular the same liberties, franchises, privileges, and temporal jurisdictions, which the said late owners of the said sites, circuits, precincts, honours, castles, manors, and other the premises, lawfully had, used, and exercised by themselves, or by their officers or ministers, or which they might have used or exercised within three months next before the same sites, circuits, precincts, honours, castles, manors, and other the premises, came to the possession of the King's Highness, shall be by virtue of this act revived, and be really and actually in the King's Highness, his heirs and successors, and shall be for ever in the rule, order, survey, and governance of the said chancellor, officers, and ministers of the said county palatine and dutchy of Lancaster: and that the same liberties, franchises, privileges, and temporal jurisdictions, and all manner of fines, issues, amerciements, and other profits and commodities, of what kinds or nature soever they be, coming, growing, or rising by reason or occasion of them, or any of them, shall be used, exercised, and executed, to all purposes, intents, conditions and respects, and shall be claimed, levied, collected, and taken by such stewards, bailiffs, and other officers and ministers, as shall please the King's Highness to name and appoint for the same in like manner, form and condition, as they or any of them were used, exercised, executed, claimed, levied, collected and taken, before they came to the hands and possession of our said Sovereign Lord: and that the said steward, bailiffs, officers, and ministers, shall be compelled to accompt for the same before the said chancellor, officers, and ministers of the said county palatine and dutchy of Lancaster, as other officers and accomptants in the court of the said dutchy heretofore have done, or owe to do.

The lands of the late monasteries of friars, &c. shall be in the government of the officers of the dutchy.

1540.

The stewards and bailiffs of those liberties shall be attendant on the King's courts.

The sheriff or other officers shall not meddle within those liberties.

This statute shall not diminish the liberties of any lands being parcel of dutchy of Lancaster.

The liberties of the cinque ports reserved.

Hospitallers. The corporation of the religion of St. John's in England and Ireland dissolved.

11. And be it enacted by authority aforesaid, that the said stewards, bailiffs, and other officers and ministers, shall be attendant and obedient to all other the King's courts, as well for all executions and returns of writs, warrants, and precepts, as for personal appearances, and other duties of their offices, like as the officers and ministers of the said late owners did or ought to do, or should have done, by reason of the said several offices, before that the same liberties, privileges, and temporal jurisdictions did come to the possession of our said Sovereign Lord; and that to be done and observed, upon all pains and penalties by the laws of this realm limited and ordained for any offence or default in the same: and that no sheriff, under-sheriff, or other officer or minister of any sheriff, or other foreign officer or minister, shall in anywise intromit or meddle in, with, or upon any of the premises, otherwise, or in any other manner, or for any other cause, than they or any of them might lawfully have done before the said premises did come to the possession of our said Sovereign Lord.

12. Provided always, that this act, nor any thing therein contained, shall in anywise extend to abrogate, annul, diminish, nor to take any liberties, franchises, privileges, jurisdictions, royalties, or any other profits, commodities and advantages, whatsoever they be, belonging or in anywise appertaining to any the King's castles, honours, manors, lands, tenements, or other his possessions of his said county palatine of Lancaster, and dutchy of Lancaster, or of either of them; but that all such liberties, franchises, privileges, jurisdictions, royalties, and all other such profits, and commodities, and advantages, whatsoever they be, shall be received, taken, and answered to the King's Highness, his heirs and successors, by the chancellor, officer, and ministers of the said county palatine of Lancaster, and dutchy of Lancaster, and either of them, as heretofore has been used and done at any time before the fourth day of February, in the seven and twentieth year of his most noble reign: any thing, matter, or clause in this act contained to the contrary hereof in anywise notwithstanding.

13. Provided always, that this act, or any thing therein contained, do not extend to disannul, or be hurtful to any of the liberties or privileges of the cinque ports, or the members of the same; but that they and every of them shall enjoy, possess, and have, all and singular liberties, customs, and grants, to them granted heretofore by the most famous prince of memory, King Edward the Fourth, and other his noble progenitors, confirmed by our Sovereign Lord the King's Majesty that now is, in like manner and form as though this act had never been had ne made.

32 H. 8. c. 24. 1 Gw. 47.

THE lords spiritual and temporal, and the commons, in this present parliament assembled, having credible knowledge that divers and sundry the King's subjects, called the Knights of Rhodes, otherwise called Knights of St. John's, otherwise called Friars of the Religion of St. John of Jerusalem, in England, and of a like house being in Ireland, abiding in the parts beyond the sea, and having as well out of this realm, as out of Ireland, and other the King's dominions, yearly great sums of money for maintenance of their livings, have unnaturally, and contrary to the duty of their allegiances, sustained and maintained the usurped power and authority of the Bishop of Rome, lately used and practised within this realm, and other the King's dominions; and have not only adhered themselves to the said bishop, being common enemy to the King our Sovereign Lord, and to this his realm, untruly upholding, knowing, and affirming maliciously and traitorously the same bishop to be supreme and chief head of Christ's church by God's holy word, intending thereby to subvert and overthrow the good and godly laws and statutes of this realm, their natural country, made and grounded by authority of holy church, by the most excellent wisdom, policy, and goodness of the King's Majesty, with the whole assent and consent of the realm, for the abolishing, expulsing, and utter extingishing of the said usurped power and authority, but also have defamed and slandered as well the King's Majesty, as the noblemen, prelates, and other the King's true and loving subjects of this realm, for their good and godly proceeding in that behalf;

behalf; have therefore deeply pondered and considered, that like as it is and was a most godly act of the King's most royal Majesty, and the said noblemen, prelates, and commons, of this realm, utterly to expulse and abolish, not only from this realm, but also from other the King's dominions, the said usurped power and authority of the Bishop of Rome, and also the hypocritical and superstitious religion in this realm, and other the King's dominions, being his members and adherents, having their original erection and foundation by the said usurped authority; by expulping whereof, God's holy word, necessary for increase of virtue, and salvation of Christian souls, is not only purely and sincerely advanced, and set forth, but also the extort exactions of innumerable sums of money craftily exhausted out of this realm, and of other the King's dominions, by the colour of the said usurped authority, is removed, and taken away, to the inestimable benefit and commodity of the King's loving subjects; so like manner of wise, it should be most dangerous to be suffered or permitted within this realm, or in any other the King's dominions, any religion, being sparks, leaves, and imps of the said root of iniquity; considering also, that the isle of Rhodes, whereby the said religion took their old name and foundation, is surprised by the Turk; and that it were and is much better, that the possessions in this realm, and in other the King's dominions, appertaining to the said religion, should rather be employed and spent within this realm, and in other the King's dominions, for the defence and surety of the same, than converted to and among such unnatural subjects, who have declined not only from their natural duty of obedience that they ought to bear unto the King our Sovereign Lord, but also from the good laws and statutes of this realm, their natural country, daily doing, and attempting privily and craftily all that they can to subvert the good and godly policy, in the which, thanks be to God and our most dread Sovereign Lord, this realm and other the King's dominions now stand; in consideration whereof, the said lords spiritual and temporal, and the commons, in this present parliament assembled, most humbly beseechen the King's most royal majesty, that it may be enacted by his Highness, and by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, that the corporation of the said religion, as well within this realm, as within the King's dominion and land of Ireland, by whatsoever name or names they be founded, incorporated, or known, shall be utterly dissolved, and void to all intents and purposes; and that Sir William Weston, Kt. now being prior to the said religion of this realm of England, shall not be named or called from henceforth, prior of St. John's of Jerusalem, in England, but shall be called by his proper name of William Weston, knight, without further addition touching the said religion; and that likewise John Rauston, knight, now being prior of Kilmainam, in Ireland, shall not be called or named from henceforth, prior of Kilmainam, in Ireland, but only his proper name of John Rauston, knight, without further addition touching the said religion; nor that any of the brethren or confreres of the said religion in this realm of England, and land of Ireland, shall be called Knights of Rhodes, nor Knights of St. John's, but shall be called by their own proper christian names and surnames of their parents, without any further addition touching the said religion.

2. And be it further enacted by authority of this present parliament, that if the said William Weston, or any of his brethren or confreres of the hospital or house of St. John of Jerusalem, in England, now abiding and dwelling within this realm of England, or any other person or persons, being members professed of or in the said hospital, now dwelling within the said realm, at any time after the first day of July next coming, do use or wear within this realm or elsewhere, in or upon any apparel of their bodies, any sign, mark, or token heretofore used and accustomed, or hereafter to be devised for the knowledge of the said religion, or make any congregations, chapters, or assemblies, touching the same religion; or maintain, support, use, or defend any liberties, franchises, or privileges heretofore granted to the said religion, by the authority of the Bishop of Rome, or of the see of the same; that then every of them so offending shall incur and run into the pains, forfeitures and penalties, ordained and

Priors and confreres wearing any sign of their religion, or making any assemblies touching the same, or defending any privileges thereof shall incur *premunire*.

1540.

and provided by the statute of provision and *præmunire*, made in the sixteenth year of King Richard the Second; and if the said John Rauson, knight, or any of his brethren or confreres of the said hospital or house of Kilmainam, in Ireland, or any other person or persons, being members professed of or in the said hospital of Kilmainam, now abiding, and now dwelling within the land of Ireland, at any time after the last day of September next coming, do use or wear within this realm, or within the said land of Ireland, or elsewhere, in or upon any apparel of their bodies, any sign, mark, or token heretofore used and accustomed, or hereafter to be devised for the knowledge of the same religion, or make any congregations, chapters, or assemblies touching the same religion, or maintain, support, use, or defend any manner of liberties, franchises, or privileges heretofore granted to the same, by authority of the Bishop of Rome, or of the see of the same; that then every of them so offending shall incur and run into the pains, forfeitures, and penalties ordained and provided by the said statute of provision and *præmunire*, made in the said sixteenth year of King Richard the Second.

3. And be it likewise enacted by the authority aforesaid, that if any the knights, or confreres of the said religion, being the King's natural subjects, which now inhabit, abide, and dwell out of any the King's dominions, at any time after the first day of February next coming, do offend in any of the articles or offences next above rehearsed, that then every of them so offending shall incur and run into the said pains, forfeitures, and penalties next above remembered.

The King shall have the manors, lands, &c. lately belonging to the prior and brethren of St. John in England and Ireland.

4. And be it further enacted by the authority aforesaid, that the King's Majesty, his heirs, and successors, shall have and enjoy all that hospital, mansion-house, church, and all other houses, edifices, buildings, and gardens to the same belonging, being near to the city of London, in the county of Middlesex, called The House of St. John's of Jerusalem in England; and also all that hospital, church, and house of Kilmainam, in the land of Ireland, and all and singular castles, honours, manors, meases, lands, tenements, rents, reversions, services, woods, meadows, pastures, parks, warrens, liberties, franchises, privileges, parsonages, tithes, pensions, portions, knights' fees, advowsons, commandries, preceptories, contributions, responsions, rents, titles, entries, conditions, covenants, and all other possessions and hereditaments, of what natures, names, or qualities soever they be, and wheresoever they be or lie within this realm of England, or within the land of Ireland, or elsewhere within the King's dominions, which appertained or belonged to the said religion, or to the priors, masters, or governors, knights, or other ministers professed of or in the same, by the pretence, or in the right of the said religion, and all and singular goods, chattels, debts, arrearages of rents and farms, and all other things real and personal, whatsoever they be, whereof or whereunto any of the said priors, brethren, or confreres, or persons professed in the said religion, can have, or claim any particular propriety to their own proper use, by the rules and statutes of the said religion; to have and to hold the premises, and every of them, to our said Sovereign Lord, and to his heirs and successors for ever, to use and employ, by his most excellent wisdom and discretion, at his own free-will and pleasure; and that his Highness shall be deemed and adjudged in the real and actual possession of the premises, by virtue and authority of this present act; saving to all persons, and bodies politic, their heirs and successors, and the heirs and successors of every of them (other than the said prior of St. John's of Jerusalem in England, and the said prior of Kilmainam in the land of Ireland, and the brethren or confreres of every of them, and the successors of every of them, and all and every other person and persons of the said religion, and their successors, and every of them, and the successors of every of them), all such right, title, interest, possession, leases, grants, annuities, fees, offices, corrodiess, reversions, rents, and services, rent-charges, commons, rights, titles, entries, actions, petitions, pensions, portions, and all other hereditaments, of what names, natures, or qualities soever they be, which they have, should, or ought to have had, if this act had never been had made: any thing in this act to the contrary thereof notwithstanding.

A saving of the right of others.

32 H. 8. c. 28.

Lessees to enjoy Farms against Tenants in tail, &c.

1540.

WHERE great number of the King's subjects have heretofore taken leases of lands, tenements, and other hereditaments, for term of years, and divers of them for term of lives, and have given and paid great fines and great sums for the same, and also have been at great costs and charges, as well in and about great reparations and buildings upon their said farms, as otherwise concerning their said farms; yet notwithstanding the said fermors, after the deaths or resignations of their lessors, have been, and be daily with great cruelty expelled, and put out of their said farms and takings, by the heirs or successors of their said lessors, or by such persons as have interest therein after the deaths or resignations of their said lessors, by reason of privy gifts of intail, or for that the lessors had nothing in the lands, tenements, or other hereditaments so letten, at any time of the leases thereof made, but only in the right of their wives, or such other like cause, to the great impoverishment, and in manner utter undoing of the said fermors. For reformation whereof, be it ordained, established, and enacted, by the King our Sovereign Lord, the Lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that all leases hereafter to be made of any manors, lands, tenements, or other hereditaments, by writing indented under seal for term of years, or for term of life, by any person or persons being of full age of twenty-one years, having any estate of inheritance either in fee-simple or in fee-tail, in their own right, or in the right of their churches or wives, or jointly with their wives, of an estate of inheritance made before the coverture or after, shall be good and effectual in the law against the lessors, their wives, heirs, and successors, and every of them, according to such estate as is comprised and specified in every such indenture of lease, in like manner and form as the same should have been, if the lessors thereof, and every of them, at the time of the making of such leases, had been lawfully seised of the same lands, tenements, and hereditaments, comprised in such indenture, of a good, perfect, and pure estate of fee-simple thereof to their own only uses.

Leases made by tenants in fee or fee-tail, in the right of their wives or churches.

Leases made by tenant in tail, or by him who is seised in the right of his wife, or church, &c.

2. Provided always, that this act, or any thing contained, shall not extend to any leases to be made of any manors, lands, tenements, or hereditaments, being in the hands of any fermor or fermors, by virtue of an old lease, unless the same old lease be expired, surrendered, or ended within one year next after the making of the said new lease; nor shall extend to any grant to be made of any reversion of any manors, lands, tenements, or hereditaments, nor to any lease of any manors, lands, tenements, or hereditaments, which have not most commonly been letten to ferm, or occupied by the fermors thereof by the space of twenty years next before such lease thereof made; nor to any lease to be made, without impeachment of waste, nor to any lease to be made above the number of twenty-one years, or three lives at the most, from the day of making thereof; and that upon every such lease there be reserved yearly during the same lease, due and payable to the lessors, their heirs, and successors, to whom the same lands should have come after the deaths of the lessors, if no such lease had been thereof made, and to whom the reversion thereof shall appertain, according to their estates and interests, so much yearly ferm or rent, or more, as hath been most accustomedly yielded or paid for the manors, lands, tenements, and hereditaments so to be letten within twenty years next before such lease thereof made; and that every such person and persons, to whom the reversions of such manors, lands, tenements, or hereditaments, so be letten, shall appertain, as is aforesaid, after the deaths of such lessors, or their heirs, shall and may have such like remedy and advantage, to all intents and purposes, against the lessees thereof, their executors and assigns, as the same lessor should or might have had against the same lessees. So that if the lessor were seised of any special estate tail of the same hereditaments at the time of such lease, that the issue or heir of that special estate shall have the reversion, rents,

Leases to be made by tenant in tail, or of the wife's land.

1540.

Leases made by husband and wife, of the wife's land.

Leases of farms.

Leases of parsonages or vicarages.

Leases made before the statute by certain persons, and upon certain conditions.

Fine, &c. by the husband only of the wife's land shall not prejudice her or her heirs.

Leases made by the husband and the wife of the

rents, and services, reserved upon such lease after the death of the said lessor, as the lessor himself might or ought to have had, if he had lived.

3. Provided always, that the wife be made party to every such lease which hereafter shall be made by her husband of any manors, lands, tenements, or hereditaments, being the inheritance of the wife; and that every such lease be made by indenture in the name of the husband and his wife, and she to seal to the same; and that the ferm and rent be reserved to the husband and to the wife, and to the heirs of the wife, according to her estate of inheritance in the same; and that the husband shall not in any wise aliene, discharge, grant, or give away the same rent reserved, nor any part thereof, longer than during the coverture, without it be by fine levied by the said husband and wife; but that the same rent shall remain, descend, revert, or come after the death of such husband, unto such person or persons, and their heirs, in such manner and sort as the lands so leased should have done, if no such lease had been thereof made.

4. Provided also, that this act extend not to give any liberty or power to any person or persons to take any more farms, leases, or takings of any manors, lands, tenements, or other hereditaments, than he or they should or might lawfully have done before the making of this act; nor extend to give any liberty or power to any person or vicar of any church or vicarage, for to make any lease or grant of any of their messuages, lands, tenements, tithes, profits, or hereditaments belonging to their churches or vicarages, otherwise, or in any other manner, than they should or might have done before the making of this act: any thing contained in this act to the contrary notwithstanding.

5. And furthermore be it enacted by authority aforesaid, that all leases at any time within the space of three years next before the twelfth day of April, in the thirty-first year of our Sovereign Lord the King's reign, made by writing indented under seal, by any person or persons of full age, of whole memory, not unlawfully coerced, nor being covert baron, for term of years, of any manors, lands, tenements, or other hereditaments, whereof the lessor or lessors were seised of any estate of inheritance of and in the same, to their own only use; at the time of making any such lease thereof, and whereof the lessees, their executors, or assigns, be now in possession by virtue of the same lease, and no cause of re-entry or forfeiture thereof had or made, shall be good and effectual in the law against the lessors, their heirs, and successors, and the heirs and successors of every of them, according to the covenants, articles, and agreements specified in every such indenture or lease. So always there be reserved and yearly payable during the same lease to the said lessors, their heirs, or successors, or to such other as should or ought to have had the same manors, lands, tenements, or hereditaments so leased after the decease of such lessors, in case no such lease had thereof been made, as much yearly rent for the same, as was at any time therefore yielded or paid within twenty years next before the making of any such lease, or else such leases to be of no other force nor effect than they were before the making of this present act.

6. And moreover for certain consideration be it enacted by authority aforesaid, that no fine, feoffment, or other act or acts hereafter to be made, suffered, or done by the husband only, of any manors, lands, tenements, or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be or make any discontinuance thereof, or be prejudicial or hurtful to the said wife, or to her heirs, or to such as shall have right, title, or interest to the same by the death of such wife or wives; but that the same wife, or her heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such manors, lands, tenements, and hereditaments, according to their rights and titles therein, any such fine, feoffment, or other act to the contrary notwithstanding; fines levied by the husband and wife (whereunto the said wife is party and privy) only except.

7. Provided furthermore, that this clause or act extend not to give any liberty to any such wife, or to her heirs, for to avoid any lease hereafter to be made of any inheritance of the wife by her husband and her for term of one and

and twenty years, or under, or any her inheritance for term of three lives at the uttermost, whereupon as much yearly rent or more, is or shall be reserved, and yearly payable during the same lease, as was at any time therefore yielded or paid within twenty years next before the making of any such lease, according to the tenor of this present act: any thing therein contained to the contrary notwithstanding.

8. Provided also, that this act extend not to make good any lease or leases heretofore made by any ecclesiastical person or persons by their convent or common seal, which be made void or taken away by authority of any act of parliament heretofore made; nor extend to make good any lease or leases heretofore made by any ecclesiastical person or persons now being attainted of treason, under their convent seal, or otherwise; or by any other person or persons now being attainted of treason by act of parliament, or otherwise; but that all and singular such lease and leases, and every of them now made, or hereafter to be made, shall be of such like effect and strength in the law, and none other, as they and every of them were before the making of this act: any thing before-mentioned in this act to the contrary thereof notwithstanding.

1540.
inheri-
tance of
the wife.

Leases made by
Ecclesiastical
persons attainted
of treason.

37 H. 8. c. 4.

A Bill for Colleges, Chantries, &c.

(See 1 E. 6. c. 14. in which this Statute is recited.)

IN their most humble wise shewn unto your Royal Majesty, your loving subjects, the Lords spiritual and temporal, and the commons, of this present parliament assembled, that where there have been divers colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and stipendary priests, having perpetuity for ever within this your realm of England, Wales, and the Marches of the same, of which some of them by the license of your gracious Highness, or of your noble progenitors, and some of them by feoffments and wills thereupon declared, and some of them by other devices, conveyance, and assurance, have been incorporated, established, founded, erected, had, or made by divers names, surnames, degrees, and corporations, to have had a perpetual continuance for ever; sithence which time divers and many of the donors, founders, or patrons, or such as pretend to be donors, founders, or patrons of the same colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and stipendary priests, and divers other of their avaricious and covetous minds, and of their own authority, without your gracious license, have of late entered into the mansion houses, manors, lands, tenements, and other hereditaments, to the same colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and stipendary priests belonging and appertaining, and have expelled the priests, wardens, masters, ministers, rulers, governors, and incumbents of the same, out and from the possession thereof, and they, their heirs, and assigns, do occupy and enjoy the said mansion houses, manors, lands, tenements, and hereditaments, and do receive, take, and employ, and convert the rents, issues, revenues, and profits of the same to their own proper uses. And some of the said priests, wardens, masters, ministers, rulers, governors, and incumbents of the premises, by covin between them and the patrons, donors, or founders of the same, or of such as pretend to be patrons, donors, or founders of the same, or other, have also of their own authority, without your grace's license, bargained and sold all or part of their manors, lands, and tenements annexed, united, pertaining, or belonging to their said colleges, free chapels, chantries, hospitals, and other the said promotions: and some of the said priests, wardens, masters, ministers, rulers, governors, and incumbents, by the assent and consent of their patrons, donors, founders, or such other as have had interest in the same. And some of the said priests, rulers, governors, and incumbents, of their own authority, without the assent of their patrons, donors, or founders, or of such other as have had interest in the same, have now of late made leases for term of life or lives, or for term of years, of their said free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, or other the said promotions, or of the manors, lands, tenements, and other the premises, or of part

1545.
That all chapels,
&c. shall be in
the King's dis-
position.

1545.

Several causes
of the King's
great expenses
and charges.

part thereof, and have not reserved the customable rent and farm that the same has been used to be letten for; and some of them by covin have suffered recoveries, levied fines, and made feoffments and other conveyances of all or part of their said possessions, by reason whereof divers of the said free chapels, chantries, hospitals, and other promotions abovesaid, been clearly dissolved, extinct, or determined, contrary to the wills, minds, intents, and purposes of the founders, donors, or patrons of the same, and to the great contempt of your majesty, and of your authority royal. And we your grace's most loving, humble, and obedient subjects right well knowing and perceiving the exceeding great and inestimable charges, costs, and expenses which your majesty hath had and sustained, and daily doth sustain, as well for the maintenance of these present wars against the realms of France and Scotland, and for the preservation and defence of us your said subjects, against the invasions and malice of your enemies the Frenchmen and Scots (who daily do study, devise, and attempt to grieve, annoy, and hurt your said subjects), as also for the maintenance of your most royal estate, honour, dignity, and estimation, which all your said loving subjects of natural duty been bound to conserve and increase by all such ways and means as they can devise, do therefore with our whole voice, petition, and intercession most humbly beseech your majesty, that it may be enacted, ordained, and established by your highness, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, and by the authority of the same, in manner and form following, that is to say:

All colleges,
chantries, hos-
pitals, &c. hav-
ing continuance
for ever, and all
their manors,
lands, and heredi-
taments given
to the King.

2. Be it enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and of the Commons, in this present parliament assembled, and by the authority of the same, That all and singular the said colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and other the said promotions had or made to have continuance in perpetuity for ever, and being, or that hath or ought to be contributory or chargeable to the payment of the first-fruits and tenths, according to the laws and statutes in that behalf had and made, by what name, surname, degree, or corporation they or any of them were founded, ordained, established, erected, named, called or known, and all and singular the mansion-houses, manors, orchards, gardens, lands, tenements, pasture, woods, waters, rents, reversions, services, commons, tithes, pensions, portions, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever they be, appertaining or belonging, or that did appertain or belong, or were assigned or appointed to any college, free chapel, chantry, hospital, fraternity, brotherhood, guild, stipendary priests, or other the said promotions, or to any of them, or accepted, known, or taken as part, parcel, or member of them, or any of them, and to the said colleges, chantries, free chapels, hospitals, fraternity, brotherhood, guild, stipendary priests, or other promotions, or to any of them, united or annexed, which between the fourth day of February, in the seven-and-twentieth year of the reign of the said sovereign lord the King, and the five-and-twentieth day of December, in the seven-and-thirtieth year of the said King's reign, by reason of any such entry, expulsion, bargain, sale, feoffment, fine, recovery, lease, or other conveyance thereof had or made, been dissolved, determined, relinquished, or extincted by any of the ways, means, or conveyances aforesaid, or otherwise, other than such of them as now be or were in the possession of our said Sovereign Lord the King, or that been granted or assured by his highness license, agreement, consent or letters-patent, to any other person or persons, or have been lawfully obtained or recovered by any person, by any former right or title, without fraud or covin, or by the king's license, shall from henceforth (by authority of this act) be adjudged and deemed, and also be in the very actual and real possession and seisin of the King our Sovereign Lord, and of his heirs and successors for ever, in as large and ample a manner as the said priests, wardens, masters, ministers, governors, rulers, or other incumbent, or any of them, or the patrons, donors, or founders of them, or any of them, and at any time since the said fourth day of February, in the seven-
and-

1545.

and-twentieth year aforesaid, had, occupied, or enjoyed, or now hath, occupieth, or enjoyeth the same, and as though all and singular the said colleges, chantries, hospitals, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, and the said manors, lands, tenements, hereditaments, and other the premises whatsoever they be, and every of them, were in the present act specially, particularly, and certainly rehearsed, named, and expressed by express word, names, surnames, corporations, title, and faculties, and in their natures, kinds, and qualities; the said entries, expulsions, bargains, sales, fines, feoffments, recoveries, or other assurance and conveyance whatsoever they be, had, or made (except before excepted) to the contrary notwithstanding.

3. And be it further enacted by the authority aforesaid, That all covenants, bonds, and grants of any rent or annuity, made by any person or persons to any chantry priest, or other, having any of the said promotions, for and in consideration of any bargain, grant, or other assurance made of any of the said promotions, or any part of them, shall be void and frustrate.

4. And over that it is ordained and enacted by the authority aforesaid, That all and every person and persons, which being in life, which have or hath for any sum of money to him or them paid, bargained, or sold, any manors, lands, or other hereditaments, that did belong or appertain to any of the said colleges, chantries, free chapels, hospitals, fraternities, guilds or other promotions aforesaid, dissolved, relinquished, determined, after the said fourth day of February, as is abovesaid, shall repay to such persons as so bought any of the said manors, lands, tenements, or other hereditaments, or to his executors or assigns, upon a request therefore made, as much money as he or they received for the sale of the thing so by him or them sold; and for non-payment thereof, such person and persons as purchased or bought the said lands, tenements, and other the premises or any parcel thereof, shall be enabled by the authority aforesaid, to sue and maintain an action of debt at the common laws of this realm, against such person or persons as so bargained or sold to him or them, or to their testator, any of the premises belonging to any college, chantry, free chapel, hospital, fraternity, guild, or other promotion aforesaid; in which action of debt, no essoin, protection, or wager of law shall be admitted or allowed.

5. And be it further enacted by the authority aforesaid, That all and every gifts, grants, surrenders, and all every other assurances, had, made, or done to the king's highness of any of the said colleges, chantries, and other the said promotions, or of any manors, lands, tenements, or other hereditaments to any of them annexed, united, or belonging, at any time between the said fourth day of February, in the said seven-and-twentieth year of our said Sovereign Lord the King's reign, and the said five-and-twentieth day of December, in the seven-and-thirtieth year of his most gracious reign, shall be by the said authority taken, judged and deemed good and perfect, to all intents, constructions, purposes, as well against the said chantry priests, masters, wardens, ministers, governors, rulers, and other having any other the said promotions, their successors and assigns, and the successors and assigns of every of them, as against all and every founder, donor, and patron thereof, and every of them, and the heirs and successors of them, and every of them.

6. And be it further enacted by the authority aforesaid, That all and every letters-patent made by the king's highness to any person or persons of any of the said colleges, chantries, guilds, fraternities, or other the said promotions, of any part or parcel of the said colleges, chantries, hospitals, guilds, fraternities, brotherhoods, or other the said promotions, and that all fines, feoffments, recoveries, and all other assurances and conveyances thereof, had or made by the king's assent, consent, license, or agreement, to any person or persons, by any chantry priest, master, warden, minister, ruler, governor, or other having any the said promotions of any of the said colleges, chantries, hospitals, guilds, fraternities, brotherhoods, or any of the said promotions, or of any manors, lands, tenements, or hereditaments, belonging, annexed, or united to any of them, or of any part, parcel, or member of the same, shall stand and be in their forces and effects, according to their tenors, forms, and effects, and shall be by the authority of this act good, perfect, and available, as well against the said chantry

Rents or annuities granted in consideration of any bargain of the said lands to be void.

Money taken for the sale of lands of any chantry, college, &c. shall be repaid.

Assurances of college lands, &c. to the King shall be good.

All letters-patent granted by the King, and all assurances made by his consent of any colleges and chantries, &c. shall be good.

1545.

Several causes
of the King's
great expenses
and charges.

part thereof, and have not reserved the customable rent and farm that the same has been used to be letten for; and some of them by covin have suffered recoveries, levied fines, and made feoffments and other conveyances of all or part of their said possessions, by reason whereof divers of the said free chapels, chantries, hospitals, and other promotions abovesaid, been clearly dissolved, extinct, or determined, contrary to the wills, minds, intents, and purposes of the founders, donors, or patrons of the same, and to the great contempt of your majesty, and of your authority royal. And we your grace's most loving, humble, and obedient subjects right well knowing and perceiving the exceeding great and inestimable charges, costs, and expenses which your majesty hath had and sustained, and daily doth sustain, as well for the maintenance of these present wars against the realms of France and Scotland, and for the preservation and defence of us your said subjects, against the invasions and malice of your enemies the Frenchmen and Scots (who daily do study, devise, and attempt to grieve, annoy, and hurt your said subjects), as also for the maintenance of your most royal estate, honour, dignity, and estimation, which all your said loving subjects of natural duty been bound to conserve and increase by all such ways and means as they can devise, do therefore with our whole voice, petition, and intercession most humbly beseech your majesty, that it may be enacted, ordained, and established by your highness, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, and by the authority of the same, in manner and form following, that is to say:

All colleges,
chantries, hos-
pitals, &c. hav-
ing continuance
for ever, and all
their manors,
lands, and here-
ditaments given
to the King.

2. Be it enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and of the Commons, in this present parliament assembled, and by the authority of the same, That all and singular the said colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and other the said promotions had or made to have continuance in perpetuity for ever, and being, or that hath or ought to be contributory or chargeable to the payment of the first-fruits and tenths, according to the laws and statutes in that behalf had and made, by what name, surname, degree, or corporation they or any of them were founded, ordained, established, erected, named, called or known, and all and singular the mansion-houses, manors, orchards, gardens, lands, tenements, pasture, woods, waters, rents, reversions, services, commons, tithes, pensions, portions, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever they be, appertaining or belonging, or that did appertain or belong, or were assigned or appointed to any college, free chapel, chantry, hospital, fraternity, brotherhood, guild, stipendary priests, or other the said promotions, or to any of them, or accepted, known, or taken as part, parcel, or member of them, or any of them, and to the said colleges, chantries, free chapels, hospitals, fraternity, brotherhood, guild, stipendary priests, or other promotions, or to any of them united or annexed, which between the fourth day of February, in the seven-and-twentieth year of the reign of the said sovereign lord the King, and the five-and-twentieth day of December, in the seven-and-thirtieth year of the said King's reign, by reason of any such entry, expulsion, bargain, sale, feoffment, fine, recovery, lease, or other conveyance thereof had or made, been dissolved, determined, relinquished, or extincted by any of the ways, means, or conveyances aforesaid, or otherwise, other than such of them as now be or were in the possession of our said Sovereign Lord the King, or that been granted or assured by his highness license, agreement, consent or letters-patent, to any other person or persons, or have been lawfully obtained or recovered by any person, by any former right or title, without fraud or covin, or by the king's license, shall from henceforth (by authority of this act) be adjudged and deemed, and also be in the very actual and real possession and seisin of the King our Sovereign Lord, and of his heirs and successors for ever, in as large and ample a manner as the said priests, wardens, masters, ministers, governors, rulers, or other incumbent, or any of them, or the patrons, donors, or founders of them, or any of them, and at any time since the said fourth day of February, in the seven-and-

and-twentieth year aforesaid, had, occupied, or enjoyed, or now hath, occupieth, or enjoyeth the same, and as though all and singular the said colleges, chantries, hospitals, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, and the said manors, lands, tenements, hereditaments, and other the premises whatsoever they be, and every of them, were in the present act specially; particularly, and certainly rehearsed, named, and expressed by express word, names, surnames, corporations, title, and faculties, and in their natures, kinds, and qualities; the said entries, expulsions, bargains, sales, fines, feoffments, recoveries, or other assurance and conveyance whatsoever they be, had, or made (except before excepted) to the contrary notwithstanding.

3. And be it further enacted by the authority aforesaid, That all covenants, bonds, and grants of any rent or annuity, made by any person or persons to any chantry priest, or other, having any of the said promotions, for and in consideration of any bargain, grant, or other assurance made of any of the said promotions, or any part of them, shall be void and frustrate.

4. And over that it is ordained and enacted by the authority aforesaid, That all and every person and persons, which being in life, which have or hath for any sum of money to him or them paid, bargained, or sold, any manors, lands, or other hereditaments, that did belong or appertain to any of the said colleges, chantries, free chapels, hospitals, fraternities, guilds or other promotions aforesaid, dissolved, relinquished, determined, after the said fourth day of February, as is abovesaid, shall repay to such persons as so bought any of the said manors, lands, tenements, or other hereditaments, or to his executors or assigns, upon a request therefore made, as much money as he or they received for the sale of the thing so by him or them sold; and for non-payment thereof, such person and persons as purchased or bought the said lands, tenements, and other the premises or any parcel thereof, shall be enabled by the authority aforesaid, to sue and maintain an action of debt at the common laws of this realm, against such person or persons as so bargained or sold to him or them, or to their testator, any of the premises belonging to any college, chantry, free chapel, hospital, fraternity, guild, or other promotion aforesaid; in which action of debt, no essoin, protection, or wager of law shall be admitted or allowed.

5. And be it further enacted by the authority aforesaid, That all and every gifts, grants, surrenders, and all every other assurances, had, made, or done to the king's highness of any of the said colleges, chantries, and other the said promotions, or of any manors, lands, tenements, or other hereditaments to any of them annexed, united, or belonging, at any time between the said fourth day of February, in the said seven-and-twentieth year of our said Sovereign Lord the King's reign, and the said five-and-twentieth day of December, in the seven-and-thirtieth year of his most gracious reign, shall be by the said authority taken, judged and deemed good and perfect, to all intents, constructions, purposes, as well against the said chantry priests, masters, wardens, ministers, governors, rulers, and other having any other the said promotions, their successors and assigns, and the successors and assigns of every of them, as against all and every founder, donor, and patron thereof, and every of them, and the heirs and successors of them, and every of them.

6. And be it further enacted by the authority aforesaid, That all and every letters-patent made by the king's highness to any person or persons of any of the said colleges, chantries, guilds, fraternities, or other the said promotions, of any part or parcel of the said colleges, chantries, hospitals, guilds, fraternities, brotherhoods, or other the said promotions, and that all fines, feoffments, recoveries, and all other assurances and conveyances thereof, had or made by the king's assent, consent, license, or agreement, to any person or persons, by any chantry priest, master, warden, minister, ruler, governor, or other having any the said promotions of any of the said colleges, chantries, hospitals, guilds, fraternities, brotherhoods, or any of the said promotions, or of any manors, lands, tenements, or hereditaments, belonging, annexed, or united to any of them, or of any part, parcel, or member of the same, shall stand and be in their forces and effects, according to their tenors, forms, and effects, and shall be by the authority of this act good, perfect, and available, as well against the said chantry

Rents or annuities granted in consideration of any bargain of the said lands to be void.

Money taken for the sale of lands of any chantry, college, &c. shall be repaid.

Assurances of college lands, &c. to the King shall be good.

All letters-patent granted by the King, and all assurances made by his consent of any colleges and chantries, &c. shall be good.

1545.

and survey of
the court of
Augmentations.

part and parcel of them, which (by authority and virtue of this act) been vested adjudged, and deemed, and also shall be in the King's possession and hands, as also all other the said chantries, hospitals, colleges, free chapels, and other the said promotions, and all the manors, mansion houses, lauds, tenements, possessions, and hereditaments, whatsoever they be, to them or any of them belonging or appertaining, and every part and parcel thereof, which hereafter shall happen to come to his highness hands and possession by any such entry, seisure, or taking into his Grace's hands, by commission or commissions, as is abovesaid, from and after the said entry, seisure, and taking into his Majesty's hands, shall be in the order, rule, survey, and governance of our Sovereign Lord the King's court of Augmentations of the Revenues of his Crown, and to be granted, letten, and set to farm by the chancellor, officers, and ministers of the same court, in such manor and form as other manors, lands, and tenements appointed to the said court of the Augmentations of the Revenues of his Grace's crown, been to be granted or letten; and that all the farms, issues, revenues, and profits coming and growing of the premises, or of any part thereof, shall be taken and received to the King's use by the officers and ministers of the same court, in such manner and form as is used and had of other manors, lands, and tenements, and of the issues, revenues, and profits of the same, committed to the order, rule, survey, and governance of the said court of augmentations; any act, statute, ordinance, custom, or use heretofore had, made, or used to the contrary notwithstanding.

All suits for the
lands of chan-
tries, &c. shall
be determined in
the court of aug-
mentations.

10. And be it further enacted by the authority aforesaid, That all matters, variances, demands, suits, contentions, and debates to be had or made of or for any matter or thing, whereby the manors, lands, tenements, and hereditaments so appointed to the said court of the augmentations, shall be charged, asked, demanded, or challenged, to the hurt, detriment, or prejudice of the king, shall be heard, examined, tried, ended, and determined, by and in the said court of augmentations, in such form, manner, and condition as other matters and causes appointed to the said court, be sued, heard, examined, and determined, or by such other ways and means as to the said court shall seem convenient and meet for the administration of justice indifferently between the King's highness and his subjects.

Suits between
the King's sub-
jects, touching
the said lands,
shall be deter-
mined by the
common law.

11. And be it further ordained and enacted by the said authority, That all other matters, variances, contentions, suits, claims, and demands, to be had, made, or done between any of the King's subjects, of, for, or concerning the said manors, lands, tenements, and other the premises, or any part thereof, or for any trespass or other offence touching the same, shall be sued, asked, demanded, tried, and determined, at and by the common laws of this realm, and according to the rules, orders, and judgment of the common laws and statutes of this realm, and not in the said court of the augmentations of the revenues of the King's crown; any law, statute, ordinance, or other thing had, made, or done to the contrary notwithstanding, and as though the said court of the augmentations of the revenues of the King's crown had never been had ne made.

Assurances of
of lands, with-
out the King's
assent, shall be
void.

12. And be it further enacted by the authority aforesaid, That all recoveries, fines, feoffments, and other conveyances to be hereafter had, made, done, or suffered, for or of any estate of inheritance or freehold, without the King's majesty's assent, consent, or agreement, by any of the said chantry priests, wardens, masters, ministers, governors, rulers, or other, having any of the said promotions of the said chantries, colleges, guilds, fraternities, hospitals, and other the said promotions, or of any manors, lands, tenements, or other hereditaments, to the said chantries, colleges, and other promotions united, annexed, belonging, or appertaining, or to any part or parcel of them, and being not had, made, done, or suffered to the King's highness, shall be utterly void, frustrate, and of none effect, as well against the King's majesty, as against the successor and successors of every such chantry priest, governors, rulers, and any other having any of the said promotions, and every of them.

The right of
others saved,
except, &c.

13. Saving to all and every person and persons, bodies politic and corporate, their heirs and successors, and the heirs and successors of every of them (other than

than the masters, wardens, ministers, governors, rulers, priests, and incumbents of the said chantries, hospitals, colleges, free chapels, fraternities, brotherhoods, guilds, and others having any of the said promotions, or any of them, and the successors of them and every of them, and other than such as be and pretend to be founders, patrons, or donors of the premises, or any of them, or of any part or parcel thereof, their heirs and successors, and the heirs and successors of every of them, and other than such person and persons, and their heirs, successors and assigns, as claim or pretend to have any estate, right, title, interest, use, possession, or condition, of, in, or to the premises, or any part or parcel thereof, by reason of any feoffment, fine, bargain, and sale, or by any other ways, means, or conveyance to them made of any estate of freehold or inheritance without the King's assent, consent, or agreement, by any of the said masters, wardens, ministers, governors, rulers, priests, and incumbents, or by the founders, donors, or patrons of them, or any of them) all such right, title, claim, possession, interest, rents, annuities, commodities, commons, offices, fees, leases, liveries, livings, pensions, portions, sinodies, proxies, debts, duties and other profits, which they or any of them have, claim, ought, may or might have had, in, of or to any of the premises, or in, of, or to any part or parcel thereof, in such like manner and condition, to all intents, respects, constructions, and purposes, as if this act had never been had nor made, and as though the said chantries, hospitals, colleges, and other the said promotions had still continued and remained.

14. And it is further enacted by the authority aforesaid, That if any of the said masters, wardens, ministers, rulers, governors, priests, incumbents, or owners of any such chantry, hospital, free chapel, college, fraternity, brotherhood, guild, or other the promotions aforesaid, or any of them, within one year next before the three-and-twentieth day of November, in the seven-and-thirtieth year of our said Sovereign Lord the King's reign, have made, or hereafter shall make any lease or grant under his or their common seal, or other seal, or otherwise for term of years, life or lives, of their said chantries, hospitals, colleges, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, or of any part thereof, or of any manors, lands, tenements, possessions, or hereditaments whatsoever they be, to them or any of them united or annexed, belonging or appertaining, or to them or any of them limited or appointed, which manors, meases, lands, tenements, possessions, or other hereditaments whatsoever they be, were not before the said lease for the more part of twenty years last past set, nor let to farm, but kept and reserved in manurance, tillage, or occupation, or now be in the manurance of the said masters, wardens, ministers, rulers, governors, priests, or incumbents of the premises, for the maintenance of hospitality and good house-keeping; or within one year next before the said three-and-twentieth day of November, hath made, or hereafter shall make any lease or grant for term of lives or for term of years, of any of the said manors, meases, lands, tenements, possessions, hereditaments, and other the premises whatsoever they be, whereof and in the which any estate or interest for term of life, year or years, at the time of making any such grant or lease, then had, or shall have his being or continuance, and then was or shall not be determined, finished, or expired; or within one year next before the said three-and-twentieth day of November, hath made, or hereafter do make any lease or grant for term of life, or for term of years, of any of the said manors, meases, lands, tenements, possessions, or other hereditaments whatsoever they be, upon which leases and grants, the usual and old rents and farms accustomed to be yielded and reserved by the space of twenty years next before the said three-and-twentieth day of November, be not or shall not be thereupon reserved and yielded; or of any of the said priests, masters, wardens, ministers, or other the said governors or rulers sithence the said twenty-third day of November, hath made any bargain or sale of his or their woods, which woods be yet growing and standing, that then all and every such lease and grant of any of the premises, and every such bargain and sale of wood or woods, shall be utterly void and of none effect.

Leases of lands reserved for the maintenance of hospitality.

Leases of lands in lease for life or years made within one year.

Leases whereupon the old rent is not reserved, made within one year before, &c. and sales of wood yet growing, to be void.

1545.

Lands or leases
whereof the go-
vernors were
seised or pos-
sessed to their
own private
uses.

Pensions given
by the King for
term of life.

Abatement of
tenths and first-
fruits.

Annuities.

Woods.

15. Provided alway, and be it further enacted by the authority aforesaid, that this act or any thing therein contained, shall not extend to any manors, lands, tenements, possessions, or hereditaments, which the said masters, wardens, ministers, chantry priests, incumbents, or other the said governors or rulers of the premises, or of any of them, hath or is, or hereafter shall have, or be possessed or seised of, in fee-simple, fee-tail, general or special, for term of life, term of years, or otherwise, to his or their own proper uses by inheritance or purchase, and not being united or annexed to his or their said colleges, hospitals, free chapels, or other the said promotions, nor to any manors, lands, tenements, possessions, rents, annuities, or yearly pension or pensions of any yearly sum or sums of money, heretofore given or granted, or hereafter to be given or granted by the King our Sovereign Lord, to any of the said masters, wardens, ministers, chantry priests, incumbents, governors, or rulers of the premises, or of any of them, for term of life only, under his great seal of England, or under the seal of the augmentation of the revenues of the King's crown: but that all and every the said masters, wardens, ministers, chantry priests, incumbents, and other the governors and rulers aforesaid, and every of them, shall and may have, hold, possess, enjoy, and keep to their own proper uses, all and singular such manors, lands, tenements, possessions, and hereditaments, rents, annuities, and yearly pensions, not being annexed or united to his or their said promotions, according to such interest, estate, title, and inheritance, as they or any of them hath, or shall have, of, and in the same; any thing contained in this act to the contrary notwithstanding, and as though this act had never been had ne made.

16. Provided also, and be it enacted by the authority aforesaid, that every of the said masters, wardens, ministers, chantry priests, incumbents, and other the said governors and rulers, from whom the King's Highness, by virtue of this act, shall have, take, or seize any of his or their manors, lands, tenements, possessions, or other hereditaments, by any of the ways or means aforesaid, without giving or assuring any recompense for the same, that they and every of them from thenceforth shall yearly be defaulked, abated, and allowed out of their yearly tenths hereafter to be paid, and also of their first-fruits, as they shall happen hereafter to be due to the King in his court of first-fruits and tenths, so much money, and after such rate and portion, as the same manors, lands, tenements, and other hereditaments, which by authority of this act shall come to the King's hands and possession by any of the ways or means aforesaid, were assessed, valued, rated, and taxed at, in, and by the taxation of the tenths and first-fruits now remaining of record in the said court of first-fruits and tenths, by force of the statute thereof made, had, and provided.

17. Provided alway, and be it ordained by the authority aforesaid, that all and every person and persons that before the making of this act had or enjoyed any manner of annuity or rent to be taken or had of any of the said chantries, hospitals, colleges, or other promotions aforesaid, shall have and enjoy the same in like manner and form as they should or ought to have done, if the said chantries, hospitals, colleges, and other the said promotions had still remained and continued in esse, and full being; any thing in this act mentioned to the contrary in anywise notwithstanding.

18. Provided also, and be it further enacted by the authority aforesaid, that if any person or persons have justly and truly, without fraud and covin, paid or given any sums of money to any such master, warden, minister, governor, ruler, or to any other, having any of the said promotions, for the bargain and sale of any woods growing in and upon any of the premises, and not yet felled, as is aforesaid, which bargain and sale by this act is made void and of none effect, that the same buyers, their executors or assigns, upon request by him or them made to the chancellor of the court of augmentations for the time being, shall be well and truly contented and repaid of and with the King's treasure remaining in the hands of the treasurer of the said court of augmentations for the time being, by the hands of the said chancellor, treasurer, or other officers of the same court of augmentations, within one year after any such request, and

and after the dissolution of the said chantries, colleges, hospitals, and other the said promotions, or after the severance of any part of them, or else the said bargainers and buyers of the said wood shall have and enjoy, cut, take, and carry away the same woods so being by him or them bought; any thing above mentioned to the contrary in anywise notwithstanding.

1545.

19. Provided also, and be it enacted by authority aforesaid, that if any such governor, ruler, warden, master, minister, or other having any the same spiritual promotions, have or shall compound for their first-fruits for any such spiritual promotions, according to the laws and statutes of this realm, and the days of payment of any part thereof at the entry and seizure thereof, as is above-said, shall not then be expired or past, that all sums of money so to be payable at any day or days then to come, shall cease, and be not paid, asked, or demanded; any bond, recognizance, surety, or other thing had or made to the contrary notwithstanding.

First fruits.

20. Provided alway, and be it enacted, that all such rents, services, issues, profits, and other sums of money due and payable for any cause or matter concerning the premises, or any of them, in the King's court of his Exchequer, shall continue, and be continually and yearly levied, charged, and paid in the same court, in such manner and form as heretofore have been used; any law, custom, unity of possession in the King's Highness, or other thing to the contrary notwithstanding, and as though the said promotions, manors, lands, tenements, and other the premises, had not come to the King's hand or possession.

Money due out of the premises in the Exchequer, shall be payable as before.

37 H. 8. c. 12. 1 Gw. 51.

An Act for Tithes in London.

WHERE of late time contention, strife, and variance hath risen and grown within the city of London, and the liberties of the same, between the parsons, vicars, and curates of the said city, and the citizens and inhabitants of the same, for and concerning the payment of tithes, oblations, and other duties within the said city and liberties: for appeasing whereof, a certain order and decree was made thereof by the most reverend father in God, Thomas Archbishop of Canterbury, metropolitan, chief primate of all England, Thomas Audley, knight, Lord Audley of Walden, and then lord chancellor of England, now deceased, and other of the King's Majesty's most honourable privy council, and also the King's letters-patent and proclamation was made thereof, and directed to the said citizens concerning the same, whereupon it was after enacted in the parliament holden at Westminster by prorogation, the fourth day of February, in the twenty-seventh year of the King's Majesty's most noble reign, by authority of the same parliament, that the citizens and inhabitants of the same city should, at Easter then next coming, pay unto the curates of the said city and suburbs, all such and like sums of money for tithes, oblations, and other duties, as the said citizens and inhabitants by the order of the said late lord chancellor, and other the King's most honourable council, and the King's said proclamation, paid or ought to have paid by force and virtue of the said order at Easter, which was in the year of our Lord God, MDXXXV, and the same payments so to continue from time to time, until such time as any other order or law should be made, published, ratified, and confirmed by the King's Highness, and the two and thirty persons by his Grace to be named, as well for the full establishment concerning the payment of all tithes, oblations, and other duties of the inhabitants within the said city, suburbs, and liberties of the same, as for the making of other ecclesiastical laws of this realm of England, and that every person denying to pay, as is aforesaid, should, by the commandment of the Mayor of London for the time being, be committed to prison, there to remain until such time as he or they should have agreed with the curate or curates for their said tithes, oblations, and other duties, as is aforesaid, as in the said act more plainly appeareth: sithen which act divers variances, contentions and strifes, are newly risen and grown between the said parsons, vicars, and

Tithes. London.

1545.

Arbitrators.

The penalty in case of refusal to pay tithes according to the arbitrators decree.

and curates, and the said citizens and inhabitants, touching the payment of the tithes, oblations, and other duties, by reason of certain words and terms specified in the said order, which are not so plainly and fully set forth, as is thought convenient and meet to be; for appeasing whereof, as well the said parsons, vicars and curates, as the said citizens and inhabitants have compromised and put themselves to stand to such order and decree touching the premises, as shall be made by the said right reverend father in God, Thomas Archbishop of Canterbury, metropolitan and primate of England, the right honourable Sir Thomas Wrythesly, knight, Lord Wrythesly, and Lord Chancellor of England, the right honourable Thomas Duke of Norfolk, Lord Treasurer of England, the right honourable Sir William Paulet, knight, Lord St. John, lord president of the council, and lord great master of the King's most honourable household, the right honourable Sir John Russel, knight, Lord Russel and lord privy seal, the right honourable Edward Earl of Hertford, lord great chamberlain of England, the right honourable John Viscount Lisle, high admiral of England, Sir Richard Lister, knight, chief justice of England, Sir Edward Montague, knight, chief justice of the Common Bench at Westminster, and Sir Roger Cholmely, knight, chief baron of the Exchequer, for a final end and conclusion to be had and made touching the premises for ever. And to the intent to have a full peace and perfect end between the said parties, their heirs and successors, touching the said tithes, oblations, and other duties for ever, be it enacted by authority of this present parliament, that such end, order and direction, as shall be made, decreed, and concluded by the forenamed archbishop, lords, and knights, or any six of them, before the first day of March, next ensuing, of, for, and concerning the payments of the tithes, oblations, and other duties within the said city, and the liberties of the same, and inrolled in the King's High Court of Chancery of Record, shall stand, remain, and be as an act of parliament, and shall bind as well all citizens and inhabitants of the said city and liberties for the time being, as the said parsons, vicars, curates, and their successors for ever, according to the effect, purport, and intent of the said order and decree so to be made and inrolled; and that every person denying to pay any of his or their tithes, oblations, or other duties, contrary to the said decree so to be made, shall, by the commandment of the Mayor of London for the time being, and, in his default or negligence, by the Lord Chancellor of England for the time being, be committed to prison, there to remain till such time as he or they have agreed with the curate and curates for his or their said tithes, oblations, and other duties, as is aforesaid.

THE DECREE.

Parsons, vicars, curates, tithes.

2. As touching the payment of tithes in the city of London, and the liberties of the same, it is fully ordered and decreed by the most reverend father in God, Thomas Archbishop of Canterbury, primate and metropolitan of England, Thomas Lord Wrythesly, lord chancellor of England, William Lord St. John, president of the King's Majesty's council, and lord great master of his highness household, John Lord Russel, lord privy seal, Edward Earl of Hertford, lord great chamberlain of England, John Viscount Lisle, high admiral of England, Richard Lister, knight, chief justice of England, and Roger Cholmely, knight, chief baron of his Grace's exchequer, this present twenty-fourth day of February, *Anno Domini, secundum cursum et computationem ecclesie Anglicane, millesimo quingentesimo quadragesimo quinto*, according to the statute in such case lately provided, that the citizens and inhabitants of the said city of London, and liberties of the same, for the time being, shall yearly without fraud or covin for ever pay their tithes to the parsons, vicars, and curates of the said city, and their successors for the time being, after the rate hereafter following, that is to wit, of every ten shillings rent by the year of all and every house and houses, shops, warehouses, cellars, stables, and every of them within the said city and liberty of the same, sixteen-pence halfpenny. And of every twenty shillings rent by the year of all and every such house and houses, shops, warehouses, cellars, and stables, and every of them within the said city and liberties,

two

two shillings and nine-pence. And so above the rent of twenty shillings by the year, ascending from ten shillings to ten shillings according to the rate aforesaid.

3. Item, That where any lease is or shall be made of any dwelling house or houses, shops, warehouses, cellars, or stables, or any of them, by fraud or covin, reserving less rent than has been accustomed, or is, or that any such lease shall be made without any rent reserved upon the same, by reason of any fine or income paid beforehand, or by any other fraud or covin; that then in every such case the tenant or farmer, tenants and farmers thereof shall pay, for his or their tithes of the same, after the rate aforesaid, according to the quality of such rent or rents, as the same house or houses, shops, warehouses, cellars, or stables, or any of them were last letten for, without fraud or covin, before the making of such lease.

4. Item, That every owner or owners, inheritor or inheritors of any dwelling house or houses, shops, warehouses, cellars, or stables, or any of them, within the said city and liberties, inhabiting or occupying the same himself, or themselves, shall pay after such rate or tithes as is abovesaid, after the quantity of such yearly rent as the same was last letten for, without fraud or covin.

5. Item, If any person or persons have taken, or hereafter shall take any *Leases.* mease or mansion place by lease, and the taker or takers thereof, his or their executors or assigns, do or shall inhabit in any part thereof, and have or has within eight years last past before this order, or hereafter will or shall let out the residue of the same; that then in such case the principal farmer or farmers, or first taker or takers thereof, his or their executors or assigns, shall pay his or their tithes, after the rate aforesaid, according to his or their quantity therein, and that his or their executors, assignees or assignees, shall pay his or their tithes after the rate abovesaid, according to the quantity of their rent by year.

6. And that if any person or persons have, or shall take divers mansion-houses, shops, warehouses, cellars, or stables, in one lease, and letteth, or shall let out one or more of the said houses, and keepeth or shall keep one or more in his or their own hands, and inhabiteth or inhabit in the same; that then the said taker or takers, and his and their executors or assigns shall pay his or their tithes after the rate abovesaid, according to the quantity of the yearly rent of such mansion-house or houses, retained in his or their hands; and that his assignee or assignees of the residue of the said mansion-house or houses, shall pay his or their tithes after the rate abovesaid, according to the quantity of their yearly rents.

7. Item, If such farmer or farmers, or his or their assigns of any mansion-house or houses, warehouses, shops, cellars, or stables, hath at any time within eight years last past, or shall hereafter let over all the said mansion-house or houses contained in his or their lease, to one person, or to divers persons; that then the inhabitants, lessees, or occupiers of them, and every of them, shall pay their tithes after the rate of such rents as the inhabitants, lessees, or occupiers, and their assignee or assignees have been or shall be charged withal, without fraud or covin.

8. Item, If any dwelling-house, within eight years last past, was, or hereafter shall be converted into a warehouse, storehouse, or such like, or if a warehouse, or storehouse, or such like, within the said eight years, was, or hereafter shall be converted into a dwelling-house; that then the occupiers thereof shall pay tithes for the same, after the rate above declared of mansion-house rents.

9. Item, That where any person shall demise any dyehouse or brewhouse, with implements convenient and necessary for dying or brewing, reserving a rent upon the same, as well in respect of such implements, as in respect of such dyehouse or brewhouse; that then the tenant shall pay his tithes after such rate as is abovesaid, the third penny abated: and that every principal house or houses, with quay or wharf, having any crane or gibbet belonging to the same, shall pay after the like rate of their rents, as is aforesaid; the third penny abated; and that other wharfs belonging to houses having no crane or gibbet, shall pay for his tithes as shall be paid for mansion-houses, in form aforesaid.

10. Item, That where any mansion-house with a shop, stable; warehouse, wharf with crane, timber yard, tenter yard, or garden belonging to the same,
or

1545.

or as parcel of the same, is or shall be occupied together, that if the same be hereafter severed or divided, or at any time within eight years last past were severed or divided; that then the farmer or farmers, occupier or occupiers thereof, shall pay such tithes as is abovesaid, for such shops, stable, warehouses, wharf with crane, timber yard, tenter yard, or garden aforesaid, so severed or divided, after the rate of their several rents thereupon reserved.

11. Item, That the said citizens and inhabitants shall pay their tithes quarterly, that is to say, at the feast of Easter, the nativity of St. John Baptist, the feast of St. Michael the archangel, and the nativity of our Lord, by even portions.

12. Item, That every householder paying ten shillings rent or above, shall, for him or herself, be discharged of their four offering-days: but his wife, children, servant, or others of their family, taking the rights of the church at Easter, shall pay two-pence for their four offering-days yearly.

13. Provided always, and it is decreed, that if any house or houses which hath been or hereafter shall be letten for ten shillings rent by year, or more, be, or hath at any time within eight years last past, or hereafter shall be divided and leased, into small parcels or members, yielding less yearly rent than ten shillings by the year; that then the owner or owners, if he or they dwell in any part of such house, or else the principal lessee and lessees, if the owner or owners do not dwell in some part of the same, shall from henceforth pay for his or their tithes after such rate of rent as the same house was accustomed to be letten for, before such division or dividing into parts or members: and the under farmer and farmers, lessee and lessees, to be discharged of all tithes for such small parcels, parts, or members, rented at less yearly rent than ten shillings by year without fraud or covin, paying two-pence yearly for four offering-days.

14. Provided alway, and it is decreed, that for such gardens as appertain not to any mansion house, and which any person or persons holdeth or shall hold in his or their hands for pleasure, or to his own use; that the then person so holding the same, shall pay no tithes for the same: but if any person or persons, which holdeth, or shall hold any such garden, containing half an acre or more, doth or shall make any yearly profit thereof by way of sale; that then he or they shall pay tithes for the same, after such rate of his rent, as is herein first above specified.

15. Provided also, that if any such gardens now being of the quantity of half an acre, or more, be hereafter by fraud or covin divided into less quantity or quantities, then to pay tithe according to the rate abovesaid.

16. Provided alway, that this decree shall not extend to the houses of great men, or noblemen, or noblewomen, kept in their own hands, and not letten for any rent, which in times past hath paid no tithes, so long as they shall so continue unletten: nor to any halls of crafts or companies, so long as they be kept unletten, so that the same halls in times past have not used to pay any tithes.

17. Provided always, and it is decreed, that this present order and decree shall not in anywise extend to bind or charge any sheds, stables, cellars, timber yards, ne tenter yards, which were never parcel of any dwelling-house, ne appertaining or belonging to any dwelling-house, ne have been accustomed to pay any tithes; but that the said citizens and inhabitants shall thereof be quit of payment of any tithes, as it hath been used and accustomed.

18. Provided also, and it is decreed, that where less sum than after sixteen-pence halfpenny in the ten shillings rent, or less sum than two shillings nine-pence in the twenty shillings rent, hath been accustomed to be paid for tithes; that then in such places the said citizens and inhabitants shall pay but only after such rate as hath been accustomed.

19. Item, It is also decreed, that if any variance, controversy, or strife, do or shall hereafter arise in the said city for non-payment of any tithes; or if any variance or doubt arise upon the true knowledge or division of any rent or tithes, within the liberties of the said city, or of any extent or assessment thereof, or if any doubt arise upon any other thing contained within this decree;

cree; that then upon complaint made by the party grieved, to the mayor of the city of London for the time being, the said mayor, by the advice of counsel, shall call the said parties before him, and make a final end in the same, with costs to be awarded by the discretion of the said mayor and his assistants, according to the intent and purport of this present decree.

20. And if the said mayor make not an end thereof within two months after complaint to him made, or if any of the said parties find themselves aggrieved, that then the Lord Chancellor of England for the time being, upon complaint to him made within three months then next following, shall make an end in the same, with such costs to be awarded as shall be thought convenient, according to the intent and purport of the said decree.

21. Provided always, that if any person or persons take any tenement for a less rent than it was accustomed to be letten for, by reason of great ruin or decay, brenning, (1) or such like occasions or misfortunes; that then such person or persons, his executors or assigns, shall pay tithes only after the rate of the rent reserved in his or their lease, and none otherwise, as long as the same lease shall endure.

(1) Burning.

1 E. 6. c. 14.

1547.

The Act for Chantries Collegiate.

THE King's most loving subjects, the Lords spiritual and temporal, and the Commons in this present parliament assembled, considering that a great part of superstition and errors in Christian Religion, hath been brought into the minds and estimations of men, by reason of the ignorance of their very true and perfect salvation, through the death of Jesus Christ, and by devising and phantasying vain opinions of purgatory, and masses satisfactory, to be done for them which be departed; the which doctrine and vain opinion by nothing more is maintained and upholden, than by the abuse of trentals, chantries, and other provisions made for the continuance of the said blindness and ignorance; and further considering and understanding that the alteration, change, and amendment of the same, and converting to good and godly uses, as in erecting grammar schools to the education of youth in virtue and godliness, the further augmenting of the universities, and better provision of the poor and needy, cannot in this present parliament be provided and conveniently done, nor cannot, ne ought to any other manner person be committed, than to the King's Highness, whose Majesty, with and by the advice of his Highness' most prudent council, can and will most wisely and beneficially, both for the honour of God, and the weal of his Majesty's realm, order, alter, convert, and dispose the same. And calling further to their remembrance, that in the parliament holden at Westminster the seven-and-thirtieth year of the reign of our late Sovereign Lord King Henry the Eighth, father to our most dread and natural Sovereign Lord the King that now is, it was ordained, enacted, and established, among other things, that all and singular colleges, free chapels, chantries, hospitals, fraternities, brotherhoods, guilds, and other promotions mentioned in the said former act, had or made to have continuance in perpetuity for ever, and then being, or that had or ought to be contributory or chargeable to the payment of the first-fruits and tenths, according to the laws and statutes in that behalf had and made, by what name, surname, degree, or corporation, they or any of them were founded, ordained, established, erected, named, called, or known: and all and singular the mansion-houses, manors, orchards, gardens, lands, tenements, pastures, woods, waters, rents, reversions, services, commons, tithes, pensions, portions, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever, then appertaining or belonging, or that did appertain or belong, or were assigned or appointed to any such college, free chapel, chantry, hospital, fraternity, brotherhood, guild, stipendiary priest, or other the said promotions, or to any of them, or accepted, known, or taken as part, parcel, or member of them,

or

1547.

or of any of them : and to the said colleges, chantries, free chapels, hospitals, fraternities, brotherhoods, guilds, stipendiary priest, or other the said promotions, or to any of them, or accepted, known or taken as part, parcel, or member of them, or of any of them : and to the said colleges, chantries, free chapels, hospitals, fraternities, brotherhoods, guilds, stipendiary priests, or other promotions, or to any of them united or annexed, which between the fourth day of February, in the seven-and-twentieth year of the said late King's reign, and the five and twentieth day of December, in the seven-and-thirtieth of his Grace's reign, by reason of any entry, expulsion, bargain, sale, feoffment, fine, recovery, lease, or other conveyance thereof made, were dissolved, determined, or relinquished by any of the ways, means, or conveyances mentioned in the said act, or otherwise, other than such of them as then were in the possession of the said late King, or that were granted or assured by his license, agreement, consent, or letters-patent, to any person or persons, or then had been lawfully obtained or recovered by any person by any former right or title, without fraud or covin, or by the King's license, should from thenceforth, by authority of the same former act, be adjudged and deemed, and also be in the very actual and real possession and seisin of the said late King, and of his heirs and successors for ever, in as large and ample manner as the said priests, wardens, masters, ministers, governors, rulers, or other incumbents, or any of them, or the patrons, donors, or founders of any of them, at any time sithence the said fourth day of February, in the seven-and-twentieth year aforesaid, had occupied or enjoyed, or then had occupied or enjoyed the same, and as though all and singular the said colleges, chantries, hospitals, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, and the said manors, lands, tenements, hereditaments, and other the premises, whatsoever they be, and every of them, had been in the said former act specially, particularly, and certainly rehearsed, named, and expressed by express words, names, surnames, corporations, titles, and faculties, and in their natural kinds and qualities: the said entries, expulsions, bargains, sales, fines, feoffments, recoveries, or other assurance and conveyance, whatsoever they were, had or made (except before in the former act excepted) to the contrary notwithstanding.

All colleges,
free chapels,
chantries, &c.
and their lands
given to the
King.

2. And where also it was enacted and granted by the said late King, by the said former act, that the same late King, during his natural life, might make and direct his commission and commissions under his great seal, to enter into all and singular such, and as many chantries, free chapels, hospitals, colleges, and other the promotions mentioned in the said former act, and into all and singular such manors, mansions, houses, meases, lands, tenements, pastures, woods, waters, rents, reversions, services, possessions, and other hereditaments whatsoever, or into any part or parcel thereof, in the name, seisin, and possession of all the hereditaments annexed, united, belonging or appertaining to any chantry, hospital, free chapel, college, fraternity, brotherhood, guild, or other the said promotions, or whereof any priests, provosts, governors, rulers, or other incumbents of them, or of any of them, by what name, surname, degree, title, or corporation, they and every of them, or any of them were founded, erected, ordained, established, named, called, or known, then had or enjoyed, or that hereafter should have or enjoy, to the said chantries, hospitals, free chapels, colleges, fraternities, brotherhoods, guilds, and other the said promotions that then were chargeable to the payment of the first-fruits and tenths, and all colleges that were chargeable, or not chargeable, to the said payment of the first-fruits and tenths, as is aforesaid, or to any of them, as should be named, expressed, and appointed in the same commission or commissions; and to seise and take the same chantries, hospitals, colleges, free chapels, fraternities, brotherhoods, guilds, and other the said promotions, manors, lands, tenements, and other the premises mentioned in the said commission or commissions, and in every of them, and every part, parcel, and member of the same, into the King's possession and hands, to have and to hold the same to the said late King, and to his heirs and successors for ever, as by the said former act, amongst other things, more at large appears. It is now ordained and enacted by the King our Sovereign Lord, with the assent of the Lords and Commons in

in this present parliament assembled, and by the authority of the same, that all manner of colleges, free chapels, and chantries, having, being, or in case, within five years next before the first day of this present parliament (which were not in actual and real possession of the said late King, nor in the actual and real possession of the King our Sovereign Lord that now is, nor excepted in the said former act in form abovesaid, other than such as by the King's commissions in form hereafter mentioned, shall be altered, transposed or changed), and all manors, lands, tenements, rents, tithes, pensions, portions, and other hereditaments and things above mentioned, belonging to them or any of them: and also all manors, lands, tenements, rents, and other hereditaments and things above mentioned, by any manner of assurance, conveyance, will, devise, or otherwise had, made, suffered, knowledged or declared, given, assigned, limited, or appointed, to the finding of any priest, to have continuance for ever, and wherewith or whereby any priest was sustained, maintained, or found, within five years next before the first day of this present parliament (which were not in the actual and real possession of the said late King, nor in the actual and real possession of our Sovereign Lord the King that now is: And also all annual rents, profits, and emoluments, at any time within five years next before the beginning of this present parliament, employed, paid, or bestowed, toward or for the maintenance, supportation; or finding of any stipendiary priest, intended by any act or writing to have continuance for ever, shall by the authority of this present parliament, immediately after the feast of Easter next coming, be adjudged and deemed, and also be in the very actual and real possession and seisin of the King our Sovereign Lord, and his heirs and successors for ever, without any office or other inquisition thereof to be had or found, and in as large and ample manner and form as the priests, wardens, masters, ministers, governors, rulers, or other incumbents of them or any of them, at any time within five years next before the beginning of this present parliament, had, occupied, or enjoyed, or now has, occupies, or enjoys the same, and as though all and singular the said colleges, free chapels, chantries, stipends, salaries of priests, and the said manors, lands, tenements, hereditaments, and other the premises, whatsoever they be, and every of them, were in this present act specially, particularly, and certainly rehearsed, named, and expressed by express words, names, surnames, corporations, titles, and faculties, and in their natures, kinds, and qualities.

3. And over that, be it ordained and enacted by the authority of this present parliament, that where any manors, lands, tenements, tithes, pensions, portions, rents, profits, or other hereditaments, by any manner of assurance, conveyance, will, devise, or otherwise, at any time heretofore had, made, suffered, knowledged, or declared, were given, assigned, or appointed, to or for the maintenance, sustentation, or finding of one priest, or divers priests, for term of certain years yet continuing, and that any priest has been maintained, sustained, or found with the same, or with the revenues or profits thereof within five years last past, that the King, from the said feast of Easter next coming, shall have and enjoy in every behalf, for and during all such time to come, every such and like things, tenements, hereditaments, profits, and emoluments, as the priest or priests ought or should have had, for or toward his or their maintenance, sustentance, or finding, and for no longer or further time; nor for any other profit, advantage, or commodity thereof to be taken.

Where lands have been given for the maintenance of priests for years.

4. Provided always, and it is ordained and enacted by the authority of this present parliament, that when and as soon as the time assigned for the maintenance, sustentation, or finding of the priest or priests, shall be expired and run, that then it shall be lawful to every person and persons, to whom any manors, lands, tenements, tithes, portions, pensions, rents, and other hereditaments, or any of them, should have belonged or appertained, if the said former act and this act had never been had or made, to enter into, take, perceive, have, and enjoy the same, without any manner of livery, *ouster le main*, petition, or other suit, to be made to the King, in like manner, form, and condition, to all intents, constructions, and purposes, as though the said former act and this act had never been had or made, and as though the King had never had

Reversioner may enter after the years expired.

1547.

Lands wholly
given to the
maintenance
of anniversaries,
&c.

Where part only
of the issues of
lands has been
employed to
the finding of
a lamp, obit, &c.

The King's
power of dis-
tress and entry
for rents.

Money given
to the finding
of a priest,
obit, lamp,
light, by a
corporation.

had any seisin or possession thereof: any thing in the said former act, or in this act, to the contrary in any wise notwithstanding.

5. And be it ordained and enacted by the authority of this present parliament, that the King our Sovereign Lord, his heirs and successors, from the said feast of Easter next coming, shall have, hold, perceive, and enjoy for ever, all lands, tenements, rents, and other hereditaments, which by any manner of assurance, conveyance, will, wills, devise, or otherwise, at any time heretofore had, made, suffered, knowledged, or declared, were given, assigned, or appointed to go, or to be employed wholly to the finding or maintenance of any anniversary, or obit, or other like thing, intent, or purpose, or of any light or lamp, in any church or chapel, to have continuance for ever, which has been kept or maintained within five years next before the said first day of this present parliament.

6. And also that where but part of the issues or revenues of any manors, lands, tenements, or other hereditaments, has by any of the ways or means abovesaid been given, assigned or appointed, to be bestowed or employed to the finding or maintenance of any anniversary or obit, or other like thing, intent or purpose, or of any light or lamp, in any church or chapel, to have continuance for ever: that then our Sovereign Lord the King shall from the said feast of Easter next coming, for ever have, perceive and enjoy every such sum of money, that in any one year within five years next before the first day of this present parliament, has been expended and bestowed about the finding or maintenance of any such anniversary or obit, or other like thing, intent or purpose, of any light or lamp, to him, his heirs and successors for ever, as a rent-charge to be paid yearly at the feast of St. Michael the Archangel, and the Annunciation of our Lady St. Mary the Virgin, by even portions in the King's Court of the Augmentations and Revenues of his Crown, or in any other court or courts, as the King hereafter shall appoint. And that it shall be lawful to our said Sovereign Lord the King, his heirs and successors, for non-payment of any such sum or sums of money, to distrain in the said manors, lands and tenements, of the issues and revenues, whereof the said anniversary or obit, or other like thing, or any such light or lamp was found, sustained or maintained: and that for lack of sufficient distress, in or upon any the premises, whereof any of the said yearly rents, or sums of money should be paid by the space of one month next after that any of the said rents should be paid, and be not paid within the said month; that then it shall be lawful to and for our Sovereign Lord the King, his heirs and successors, by virtue of this present act, to enter into, and to have and possess as much of the lands, tenements and hereditaments whereof the said rent or rents should be levied or paid, as the rent or rents that should be levied or paid out of the same, does or shall amount or come to in yearly value, and the same lands, tenements and hereditaments, to hold and keep, and to have to our said Sovereign Lord the King, his heirs and assigns, for ever, or for such estate as our Sovereign Lord the King, his heirs or successors, had or ought to have had, of or in the said rent or rents.

7. And it is also ordained and enacted by the authority of this present parliament, that our Sovereign Lord the King shall from the said feast of Easter next coming, have, perceive and enjoy, all and singular such sums of money, profits, commodities, and emoluments, which by virtue of any manner of assurance, conveyance, composition, will, devise, or otherwise, heretofore have been given, assigned, limited or appointed to have continuance for ever, which in any one year within five years next before the beginning of this present parliament, have been paid, bestowed or employed by any manner of corporations, guilds, fraternities, companies or fellowships of mysteries or crafts or any of them, being in England, Wales, and other the King's dominions, or by the masters, wardens, governors, or other officers or ministers, or by the master, warden, governor, or other officer or minister of them, or any of them, toward or about the finding, maintenance or sustentation of any priest or priests, of any anniversary or obit, lamp, light, or lights, or other like thing, as is aforesaid, to our said Sovereign Lord the King, his heirs and successors for ever, to be paid yearly as a rent-charge, at the feasts of St. Michael the Archangel, and the

the Annunciation of our Lady, by even portions, in the King's Court of Augmentations and Revenues of his Crown, or in any other court or courts, as the King hereafter shall appoint.

1547.

The King may
distrain for the
money or profit.

8. And that it shall be lawful to our said Sovereign Lord the King, his heirs and successors, for non-payment of any such sum or sums of money, profit, commodity, or emolument, or for non-payment of any of them, to distrain in all the manors, lands and tenements of every such crafts, corporations, guilds, fraternities, companies or fellowships of mysteries or crafts, or any of them, by whom, or by the masters, wardens, governors, or other officers or ministers, or master, warden, governor or minister, of the which any such sum or sums of money, profit, commodity or emolument, have or has been paid, bestowed or employed: and that all and every the said sums of money, profits, commodities and emoluments, shall from the feast of Easter next coming, without any manner of inquisition or office to be had or found, be judged and deemed to be in the actual and real possession of our said Sovereign Lord the King, in like manner and form to all intents, constructions and purposes, as if the same had been particularly and specially mentioned in this present act.

9. And furthermore be it ordained and enacted by the authority aforesaid, that the King our Sovereign Lord shall, from the said feast of Easter next coming, have and enjoy to him, his heirs and successors for ever, all fraternities, brotherhoods and guilds, being within the realm of England and Wales, and other the King's dominions: and all manors, lands, tenements and other hereditaments belonging to them or any of them (other than such corporations, guilds, fraternities, companies and fellowships of mysteries or crafts, and the manors, lands, tenements, and other hereditaments pertaining to the said corporations, guilds, fraternities, companies and fellowships of mysteries or crafts above mentioned) and shall, by virtue of this act, be judged and deemed in the actual and real possession of our said Sovereign Lord the King, his heirs and successors, from the said feast of Easter next coming, for ever, without any inquisition or office thereof to be had or found.

Fraternities,
brotherhoods,
and guilds, given
to the King.

10. And be it ordained and enacted by the authority aforesaid, that our said Sovereign Lord the King, his heirs and successors, at his and their will and pleasure, may direct his and their commission and commissions under the great seal of England, to such persons as it shall please him: and that the same commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the said commission, as well to survey all and singular lay-corporations, guilds, fraternities, companies and fellowships of mysteries, or crafts incorporate, and every of them, as all other the said fraternities, brotherhoods and guilds within the limits of their commission to them directed, and all the evidences, compositions, books of accounts, and other writings of every of them, to the intent thereby to know what money and other things was paid or bestowed to the finding or maintenance of any priest or priests, anniversary or obit, or other like thing, light or lamp, by them or any of them: as also to inquire, search and try by all such ways and means as to them shall be thought meet and convenient, what manors, lands, tenements, rents, and other hereditaments, profits, commodities, emoluments, and other things, be given, limited, or appointed to our said Sovereign Lord the King by this act, within the limits of their commission.

Commissioners
shall be appointed
with certain
powers and au-
thorities.

11. And also that the same commissioners, or two of them at the least, by virtue of this act, and of the commission to them directed, shall have full power and authority to assign, and shall appoint (in every such place where guild, fraternity, the priest or incumbent of any chantry in esse, the first day of this present parliament, by the foundation, ordinance, or the first institution thereof, should or ought to have kept a grammar school, or a preacher, and so has done sithen the feast of St. Michael the Archangel last past) lands, tenements, and other hereditaments of every such chantry, guild and fraternity, to remain and continue in succession to a schoolmaster or preacher for ever, for and toward the keeping of a grammar school, or preaching, and for such godly intents and purposes, and in such manner and form as the same commissioners, or two of them at the least, shall assign or appoint: and also to make and ordain

Lands assigned
towards the
maintenance of
a preacher or
schoolmaster.
Endowment of
a vicar.

1547.

Assigning one or more priests in a parish, and lands for their maintenance.

The commissioners shall assign yearly pensions to every governor, fellow and servant of every chantry, &c. dissolved.

Money or yearly benefit assured to certain persons out of a chantry, &c. shall be so continued and paid.

Lands assigned towards the maintenance of the walls and banks of the sea.

ordain a vicar to have a perpetuity for ever, in every parish church, the first day of this present parliament, being a college, free chapel or chantry, or appropriated, annexed or united to any college, free chapel or chantry, that shall come to the King's hands by virtue of this act, and to endow every such vicar sufficiently, having respect to his cure and charge, the same endowment to be to every such vicar, and to his successors for ever, without any other license or grant of the King, the bishop, or other officers of the diocese. And also the said commissioners, or two of them at the least, shall have authority by force of this act, to assign in every great town or parish, where they shall think necessary to have more priests than one, for the ministering of the sacraments within the same town or parish, lands and tenements belonging to any chantry, chapel, or stipendary priest, being within the same town or parish the first day of this present parliament, to be to such person and persons, as the said commissioners, or two of them at the least, shall assign or appoint to continue in succession for ever, for and towards the sufficient finding and maintenance of one or more priests within the same town or parish, as by the said commissioners, or two of them, shall be thought necessary or convenient: and as well to make ordinances and rules concerning the service, use and demeanor of every such priest and schoolmasters, as is aforesaid, to be appointed, as also by what name or names he and they shall from henceforth be named and called. And also that the said commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the said commission to them directed, to assign as well to every dean, master, warden, provost, and other incumbent, and minister of any of the said colleges, free chapels or chantries, being within the limits of their commission, which hereafter shall be dissolved or determined by virtue of this act, as to every stipendary priest, and other priest, whose salary the King shall be entitled unto by this act, as to every fellow and poor parson having yearly relief out of any of the said colleges, free chapels or chantries being within the limits of their commission, such yearly annuities, pensions, or other recompenses during their several lives, as to the same commissioners, or two of them, shall be thought meet and convenient.

12. And over that, the said commissioners, or two of them at the least, shall have full power and authority by virtue of this act, and of the commission to them directed, to inquire and try by such ways and means as they shall think meet and convenient, what money, profit and benefit any poor person or persons by virtue of any conveyance, assurance, composition, will, devise, or otherwise, heretofore had or made, intended or meant to have continuance for ever, had or enjoyed within five years next before the beginning of this present parliament, out of any college, free chapel or chantry, and other the premises, given, limited or appointed to the King by this act, being within the limits of their commission: and thereupon to make assignments and orders, in such manner and form as all and singular such said money, profit and commodity shall be paid to poor people for ever, according to such said assurance, composition, will, devise, or other thing had or made for the same: and to assign and appoint lands, tenements or other hereditaments, parcel of the premises, for the maintenance and continuance of the same for ever: and also to appoint to fraternities, brotherhoods, guilds, lands, tenements and hereditaments, parcel of the premises, towards and for the maintenance of piers, jutties, walls or banks, against the rages of the sea, havens and creeks. And that all and singular annuities, pensions, and other recompenses shall be half-yearly paid to the persons to whom the same ought to be paid by the King's receiver for the time being, of his lands commonly called the suppressed lands, or other his revenues, lying in the county or city where such college, free chapel or chantry, or other the premises, given, limited or appointed to the King by this act, the first day of this present parliament, were or remained, without any fee or reward therefore to be paid: the first payment to be begun at the feast of St. Michael the Archangel next coming: and that every such receiver, upon his account, shall have full and due allowance of all such annuities, pensions, and other recompenses by him paid, by virtue of any such assignment to be made by the said commissioners, or two of them at the least.

13. And

1547.

13. And it is ordained and enacted by the authority of this present parliament, that the said commissioners, and every of them, that shall take upon him the execution of any of the said commissions, shall be bound, as he will answer before God, to execute the commission to him and other directed, beneficially towards the deans, masters, wardens, provosts, and other incumbents and ministers aforesaid, and towards the poor people, concerning the said assignments, and also toward the maintenance of piers, jutties, walls or banks, against the rages of the sea, havens and creeks. And that all manner of assignments and ordinances to be made by the said commissioners, or two of them at the least, and certified under their seals, or the seals of two of them at the least, into the King's Court of the Augmentations and Revenues of his Crown, or to any other court or courts, by the King's Majesty to be made or assigned, shall by virtue of this act and of the said commissions, be as good and effectual in the law, to all intents, constructions and purposes, as though the same had been assigned and ordained by authority of this present parliament, by express and apt words, terms and sentences.

The commissioners oath for the favourable execution of the commission towards the deans, masters, &c.

The force of the commissioners' assignments and ordinances.

14. Provided also, that such annuities, pensions, or other recompenses, that the said commissioners, or any of them, shall assign or appoint to be paid yearly to any such dean, master, warden, governor, or other incumbent, fellow or minister, shall not extend to any more clear yearly value, than such dean, master, warden, provost, governor, or other incumbent, fellow or minister, or his predecessor, lawfully had or enjoyed in money, meat, drink, livery, or allowance of the same yearly, within five years next before the beginning of this present parliament.

No annuity or pension shall extend to more than it did before.

15. Provided also, that if any of the said masters, wardens, provosts, governors, or other incumbents, fellow or minister, shall at any time hereafter during his life, be promoted by the King to any benefice, or other spiritual promotion, being of a better, clear yearly value than his said annuity or pension, or other recompense shall be of: that then the annuity, pension, or other recompense, that any such dean, master, warden, governor, provost, or other incumbent, fellow or minister that shall be so promoted shall have, shall immediately after such promotion had, cease and utterly determine.

Pensions shall cease upon promotion to a better living.

16. And be it ordained and enacted by the authority of this present parliament, that the said commissioners, or two of them at the least, to whom any commission, by virtue or mean of this act, shall be directed and delivered, shall be bounden upon the forfeiture, every of them, of an hundred pound, to make certificate under their seals, or the seals of two of them at the least, into the said court of the augmentations and revenues of the King's crown, or into any other court, as is aforesaid, within one year next after the commission to them directed, of all manors, lands, tenements, rents, tithes, portions, pensions, hereditaments, and recompenses, by the same commissioners, or two of them, assigned or appointed to any of the uses, intents, or purposes above mentioned.

The commissioners to certify lands assigned to the uses aforesaid.

17. And also be it ordained and enacted by the authority of this present parliament, that our Sovereign Lord the King shall have and enjoy all such goods, chattels, jewels, plate, ornaments, and other moveables, as were or be the common goods of every such college, chantry, free chapel, or stipendiary priest, belonging or annexed to the furniture or services of their several foundations, or abused of any of the said corporations, in the abuses aforesaid, the property whereof was not altered nor changed before the eighth day of December, in the year of our Lord God 1547.

The King shall have the goods of every college, chantry, &c.

18. And it is also ordained and enacted by the authority of this present parliament, that all such debts and sums of money as ought or should, without fraud or covin, hereafter be paid; of the money or goods of any of the said colleges, due or payable by reason of any contract, specialty, or promise, had or made before the same eighth day, shall truly and fully be paid by the treasurer of the King's court of the augmentations and revenues of his crown, or by the treasurer or receiver of any other court to which any of the premises shall be appointed, of the King's treasurer, being in his or their hands, with as convenient speed as the same may be paid.

The debts of colleges shall be paid by the King.

19. Provided always, and be it ordained and enacted by the authority aforesaid,

Exception of the colleges, &c.

1547.

of the universities of Cambridge and Oxford, &c.

Cathedral churches wherein any chantries, obits, lamps, or lights have been maintained.

The King may alter the names of chantries.

Saving of rights.

Certain rents and duties saved to every donor, founder, and governor of a college, chantry, &c.

said, that this act, or any article, clause, or matter contained in the same, shall not in anywise extend to any college, hostel, or hall, being within either of the universities of Cambridge and Oxford; nor to any chantry founded in any of the colleges, hostels, or halls, being in the same universities; nor to the free chapel of St. George the Martyr, situate in the Castle of Windsor; nor to the college called St. Mary's College of Winchester, besides Winchester, of the foundation of Bishop Wickham; nor to the college of Eton; nor to the parish church commonly called the Chapel in the See in Newton, within the Isle of Ely, in the county of Cambridge; nor to any manors, lands, tenements, or hereditaments, to them or to any of them pertaining or belonging; nor to any chapel made or ordained for the ease of the people dwelling distant from the parish church, or such like chapel whereunto no more lands or tenements than the churchyard, or a little house or close does belong or pertain; nor to any cathedral church or college where a bishop's see is, within this realm of England, or in Wales, nor to the manors, lands, tenements, or other hereditaments of any of them, other than to such chantries, obits, lights, and lamps, or any of them, as at any time within five years next before the beginning of this present parliament, have been had, used, or maintained within the said cathedral churches, or within any of them, or the issues, revenues, or profits of any of the said cathedral churches, to which chantries, obits, lights, and lamps, it is enacted by the authority aforesaid, that this act shall extend.

20. And it is ordained and enacted by the authority aforesaid, that our Sovereign Lord the King, at any time during his life (which God long preserve), may at his will and pleasure alter and change the name or names of all and singular chantries, and the foundations of the same, being in any of the colleges, hostels, or halls, of any of the said universities, according as to his godly wisdom shall be thought meet and convenient:

21. Saving to all and every person and persons, bodies politic and corporate, their heirs and successors, and the heirs and successors of every of them (other than the masters, wardens, ministers, governors, rulers, priests, incumbents, fellows, and brethren of the said colleges, chantries, free chapels, and other the premises, given, limited, or appointed to the King by this act, and the successors of them, and every of them; and other than such as be, or pretend to be founders, patrons, or donors of the premises, or any of them, or of any part or parcel thereof, and the heirs, successors, and assigns of every or any of them; and other than such as be, or were feoffors, recoverees, conisees, grantees, or devisees of any of the premises, to, or for any of the uses, purposes, or intents above mentioned, or to the use of any of the said colleges, free chapels, chantries, or other the premises, given, limited, or appointed by this act to the King, or to the intent to employ the rents or profits thereof to the use of the masters, rulers, incumbents, or ministers of them, or any of them; and other than such person and persons, and bodies politic and corporate, their heirs, successors, and assigns, as claim or pretend to have estate, right, title, interest, use, possession, or condition, of, in, or to the premises, or any part or parcel thereof, by reason of any feoffment, fine, bargain and sale, or by any other ways, means, or conveyance to them made, of any estate of inheritance, without the said late King's license, assent, consent, or agreement, and without the license, assent, or agreement of the King's Majesty that now is, by any of the said deans, masters, wardens, ministers, governors, rulers, priests, or incumbents, or by the founders, donors, or patrons of them, or of any of them: all such right, title, claim, possession, interest, rents, annuities, commodities, commons, offices, fees, leases, liveries, livings, pensions, portions, debts, duties, and other profits, which they or any of them lawfully have, or of right ought to have, or might have had, in, of, or to any of the premises, or in, of, or to any part or parcel thereof, in such like manner, form, and condition, to all intents, respects, constructions, and purposes, as if this act had never been had or made, and as though the said chantries, colleges, and other the said promotions, had still continued and remained in their full being; and saving to all and every patron, donor, founder, or governor of any such college, chantry, free chapel, stipendiary priests, and other the premises, given, limited, or appointed

1547.

pointed to the King by this act, and the donor, feoffor, and giver of the aforesaid lands, tenements, or hereditaments, to them or any of them, or to any uses or purposes before mentioned; all such rents services, rents seck, rents charge, fees, annuities, profits, and offices; and also leases for term of life, lives, and years, whereupon the accustomed rent, or more, is reserved, as they or any of them lawfully had, perceived, and enjoyed in, out, or of any of the said promotions, or out of any of the said lands, tenements, or hereditaments, before the first day of this present parliament.

22. And over that, it is ordained and enacted by the authority of this present parliament, that all and every person and persons being in life, which have or has for any sum of money to him or them paid, bargained or sold any manors, lands, tenements, or other hereditaments aforesaid, whereunto the King our Sovereign Lord is intituled, by virtue of this act, shall repay to such person as so bought any of the said manors, lands, tenements, or other hereditaments, or to his executors or assigns, upon a request therefore made, or within three months then next ensuing the same request, as much money as he or they received for the sale of any thing so by him or them sold; and for non-payment thereof, such person and persons as purchased or bought the said lands, tenements, and other the premises, or any parcel thereof, and their executors and administrators, shall be enabled by the authority of this present parliament, to sue and maintain an action of debt at the common law of this realm, against such person or persons as so bargained or sold to him or them, or to their testator, any of the premises belonging to any college, chantry, free chapel, or other promotion spiritual; in which action of debt, none essoin, protection, or wager of law, shall be admitted or allowed.

Persons who have sold any lands due to the King by this act, shall repay the money.

23. And be it further enacted by the authority aforesaid, that all and every of the said chantries, colleges, and free chapels, and other the premises given, limited, or appointed to the King by this act, and all the mansion-houses, manors, lands, tenements, possessions, and hereditaments, and other the premises whatsoever they be, given, limited, and appointed to the King by this act, and every part and parcel of them which, by the authority and virtue of this act, been vested, adjudged, and deemed, or shall be in the King's Majesty's possession and hands, or which the King shall be intituled unto by virtue of this act, shall be in the order, survey, and governance of our Sovereign Lord the King's court of the augmentations and revenues of his crown, or in such other court as the King at any time hereafter shall assign, name, or appoint, and so shall and may be granted, letten, and set to farm by the chancellor, officers, and ministers of the same court, or of any other court so to be appointed, in such manner and form as other manors, lands, and tenements appointed to the same court of augmentations and revenues of his grace's crown, or other court, so to be appointed, been to be granted or letten: and that all the farms, issues, revenues, and profits coming and growing of the same premises, and of every part thereof, shall be taken and received to the King's use by the officers and ministers of the same court or courts, in such manner and form as is used and had of other manors, lands, and tenements, and of the issues, revenues, and profits of the same, committed to the order, rule, survey, and governance of the said court of the augmentations and revenues of the King's crown, or any other court so to be appointed: any act, statute, ordinance, custom, or use heretofore had, made, or used to the contrary notwithstanding.

All chantries, free chapels, &c. lands, shall be in the order of the court of augmentations.

24. And it is further enacted by authority aforesaid, that if any of the said masters, wardens, ministers, rulers, governors, priests, incumbents, or owners of any such college, chantry, free-chapel, or of any the premises given, limited, or appointed to the King by this act, or of any of them sithence the three and twentieth day of November, in the thirty-seventh year of the reign of the said late King, have made any lease under his or their common seal or otherwise, for term of years, life or lives, of their said colleges, chantries, free chapels, or of other the same premises, or of any part thereof, of any manors, lands, tenements, possessions, or hereditaments, whatsoever they be, to them or any of them united or annexed, belonging or appertaining, upon which leases the

Leases made by the governors not reserving the old rent, shall be void.

1547.

This act not to extend to lands whereof the governors of any colleges, &c. were seised to their own uses, nor to lands, annuities, &c. not united to the said colleges, &c.

Persons having rent or yearly profit out of the lands of any chantry, &c. shall enjoy them.

Compositions for first-fruits.

Money payable out of the premises yearly into the Exchequer.

usual and old rents and farms accustomed to be yielded and reserved, or more, by the space of twenty years next before the said three and twentieth day of November, be not reserved and yielded, shall be utterly void and of none effect: and that all other leases and grants heretofore made, of any of the premises given, limited, or appointed to the King by this act, shall be as good, available, and effectual in the law, to all intents, constructions, and purposes, as if this act had never been had or made: any thing in this act, or any other act heretofore had or made, to the contrary thereof in any wise notwithstanding.

25. Provided always, and be it further ordained and enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to any manors, lands, tenements, possessions, or hereditaments, which the said masters, wardens, ministers, chantry priests, incumbents, or other the said governors, officers, ministers, or rulers of the premises, or of any of them, has, or is, or hereafter shall have or be possessed or seised of in fee simple, fee tail, general or special, for term of life, term of years, or otherwise, to his or their own proper uses, by inheritance or purchase; and not being at any time united or annexed to his or their said colleges, free chapels, chantries, or other the premises given, limited, or appointed to the King by this act: nor shall extend to any manors, lands, tenements, possessions, rents, annuities, and yearly pension or pensions, or to any yearly sum or sums of money, being not united, or parcel of any of the said colleges, and other the premises aforesaid, or any of them, heretofore given or granted by the said late King, or given or granted, or hereafter to be given or granted by the King our Sovereign Lord, to any of the said deans, masters, wardens, ministers, chantry priests, incumbents, governors, or rulers of the premises, or of any of them, for term of life only, under his great seal of England, or under the seal of the court of the augmentations and revenues of the King's crown, or any other of the King's seals of any of his courts: any thing contained in this act to the contrary in any wise notwithstanding.

26. Provided alway, and be it enacted by authority aforesaid, that as well all and every patron, donor, founder, and giver of any of the said promotions or premises, or giver, donor, or feoffor of any their lands, tenements, possessions, or other hereditaments, as all and every person and persons, bodies politic and corporate, which before the making of this act, lawfully, without fraud or covin, had or enjoyed any manner of rent, or other yearly profits to be taken, perceived, or had of any chantries, colleges, free chapels, or other the premises given, limited, or appointed to the King by this act, or out of any manors, lands, tenements, or other possessions of them, or any of them, shall have and enjoy the same in like manner and form as they should or ought to have done, if the said colleges, chantries, free chapels, and other the premises given, limited, or appointed to the King by this act, had still remained and continued in esse and full being: any thing in this act mentioned to the contrary in any wise notwithstanding.

27. Provided also, and be it enacted by the authority aforesaid, that if any such governor, ruler, warden, master, incumbent, minister, or other, having any of the said spiritual promotions, or incumbents, have or shall compound for the first-fruits of any such spiritual promotions, according to the laws and statutes of this realm, and the days of payment of any part thereof, not expired before the first day of this parliament, that all sums of money so to be due and payable sithence the said first day of this parliament, shall cease and be not paid, asked, or demanded: any bond, recognizance, surety, or other thing had or made to the contrary notwithstanding.

28. Provided always, and be it enacted by the authority aforesaid, that all such rents, services, issues, profits, and other sums of money payable out of, or for any of the premises, or any of them, in the King's Court of Exchequer, shall continue and be continually and yearly levied, charged, or paid in the same court, in such manner and form as heretofore has been used; any law, custom, unity, or possession in the King's Highness, or other thing to the contrary notwithstanding, and as though the said promotions, manors, lands, tenements, and other the premises, had not come to the King's hands or possession.

29. And

29. And be it further enacted by the authority aforesaid, that all and every letters-patent made by the said late King Henry the Eighth, or by the King's Majesty that now is, or hereafter to be made by his Highness to any person or persons, or to any archbishop or bishop, of any of the said colleges, chantries, free chapels, or other the premises, or any part or parcel of them, or of any lands, tenements, or hereditaments belonging or appertaining, or that did belong or appertain to them, or to any of them, and all fines, gifts, grants, feoffments, recoveries, and all other assurances and conveyances thereof had or made by the assent, consent, or license under the great seal of England, of the said late King Henry the Eighth, or of the King's Majesty that now is, to any person or persons, bodies politic or corporate, by any chantry priest, master, warden, minister, ruler, governor, or other having any of the said promotions of any of the said colleges, chantries, free chapels, or other the premises, or any of them, or of any part, parcel, or member of the same, shall stand and be in their forces and effects, and shall be good and effectual in the law, for such estates and interests given, granted, limited, or appointed in any of the gifts, grants, assurances, or conveyances thereof had or made, according to their purport, form, and manner, and according to the true intent and meaning of the same assurances, and shall be by authority of this act good, perfect, and available, as well against the King, his heirs, and successors, as against the said chantry priests, wardens, masters, rulers, governors, and other having any of the said promotions, and their successors, and the successors of every of them; as also against the founders, donors, and patrons of the same, and the ordinary of them, and of every of them, and the heirs and successors of every of them: any law, statute, ordinance, or other thing to the contrary thereof notwithstanding.

1547.

Assurances
made by King
H. 8. or King
Ed. 6. or by the
license of either
of them, of any
colleges, &c. or
their lands.

30. And where divers and sundry bishops, deans, archdeacons, treasurers, prebendaries, chantry priests, masters, provosts, rulers, governors of any deaneries, archdeaneries, treasurerships, prebends, free chapels, chantries or colleges, within this realm of England, and other the King's Majesty's dominions, or any of the patrons, founders, donors of any of the bishoprics, treasurerships, deaneries, chantries, free chapels, or other the said spiritual promotions, of their voluntary wills or minds, for divers good and reasonable causes and considerations, by deed or deeds, enrolled, or by other writings or conveyances heretofore given and granted to the late King of famous memory, Henry the Eighth, late King of England, and to his heirs, or to our Sovereign Lord the King, that now is, and to his heirs, divers of their deaneries, archdeaneries, treasurerships, prebends, chapels, chantries and colleges, or any other ecclesiastical or spiritual promotions last before remembered; and all or some part of the manors, lands, tenements, tithes, pensions, annuities, rents, reversions, and other revenues, hereditaments, possessions, emoluments and profits to the same bishoprics, deaneries, colleges, and other like promotions, benefices, offices and dignities, or to any of them belonging, appertaining, united or annexed, or which the said bishops, deans, archdeacons, treasurers, chantry priests, masters, provosts, rulers, governors, and other ecclesiastical or spiritual officers or ministers, or any of the said patrons, donors or founders, or any of them, had or enjoyed in the right, or by reason of any of the same promotions, offices or dignities.

31. Be it enacted by the authority aforesaid, that all and every gifts and grants heretofore made to the said late King, and to his heirs, or to our Sovereign Lord the King that now is, and to his heirs, by any archbishop, bishop, dean, archdeacon, treasurer, prebendary, master, provost, governor, or other the said ecclesiastical or spiritual person or persons, or by any patrons, donor or founder of any of the said deaneries, chantries, or other of the said spiritual or ecclesiastical promotions, of all or any of the manors, lands, tenements, tithes, rents, reversions, pensions, portions, annuities, or other hereditaments, revenues, emoluments, profits or commodities, to any of the said benefices, offices, prebends, promotions or dignities belonging, appertaining, united or annexed, or which any of the same archbishops, bishops, deans, archdeacons, treasurers, masters, provosts, prebendaries, rulers, governors, officers or ministers,

A confirmation
of all grants
made to the
King of any spi-
ritual promo-
tions, by the go-
vernors thereof.

1547.

A saving of the
right of others.

ters, patrons, founders or donors, had or enjoyed, or have or enjoy, or ought to have or enjoy in the right, or by reason or means of any of the same promotions, offices or dignities, shall be good and effectual in the law, to all intents and purposes: saving to all and every person and persons, and bodies politic and corporate, their heirs, successors and assigns, and to the heirs, successors and assigns of every of them (other than the archbishops, bishops, deans, archdeacons, treasurers, prebendaries, rulers, governors, wardens, provosts, givers and granters of any of the premises, and the heirs, successors and assigns; and other than such ecclesiastical or spiritual person, bodies politic or corporate, as are, or pretend to be founders, donors, patrons or ordinaries of the premises, or any of them,) all such rights, titles, interests, claims, entries, rents, reversions, remainders, fees, offices, annuities, lands, tenements, hereditaments, profits, commodities and emoluments, as they or any of them have or should, or ought to have had, of, in or to the premises next above mentioned, or any part thereof, as if this act had never been had or made; any thing in this act to the contrary in anywise notwithstanding.

This act not to
extend to gifts,
&c. by parsons
or vicars.

32. Provided always, that this act, or any thing therein contained, shall not in anywise extend to make good or effectual any gift, grant, bargain, sale or alienation made by any parson or vicar of their parsonages or vicarages, or of any part or parcel thereof, or of any thing to them, or any of them belonging or appertaining.

Cobham college.

33. Provided also, that this act, or any thing therein contained, shall not in anywise extend to hinder or prejudice George Brook, knight, Lord Cobham, his heirs or assigns, for or concerning the late college of Cobham, in the county of Kent, or the manors, lands, tenements or possessions thereof; any thing above mentioned to the contrary in anywise notwithstanding.

This act shall
not extend to
corporations
of cities, bo-
roughs or towns.

34. Provided also, and be it enacted by the authority aforesaid, that this present act, nor any thing therein contained, shall in anywise extend or be prejudicial or hurtful to the general corporation of any city, borough or town within this realm, or any other the King's dominions, ne shall extend to any the lands, or hereditaments of them, or any of them, any thing therein contained to the contrary in anywise notwithstanding.

Colleges, chan-
tries, &c. within
the dutchy of
Lancaster.

35. Provided also, and be it enacted by the authority aforesaid, that all such of the said colleges, free chapels, chantries, or other the premises, being appointed and given to the King's Highness by the authority of this act, as be within the dutchy of Lancaster, and all manors, lands, tenements and hereditaments pertaining or belonging to the same colleges, free chapels and chantries, shall after the said feast of Easter next coming, be within the survey and order of the court of the dutchy of Lancaster, in such manner and form as other the premises be assigned or appointed by authority of this act, to be in the survey and order of the court of augmentations and revenues of the King's crown, or other court by the King to be assigned; and that all commissions that hereafter shall be awarded by virtue and force of this act, concerning such colleges, free chapels, chantries, and other the premises, as be within the said dutchy of Lancaster, shall be awarded under the great seal of England, and shall be certified into the same court of the dutchy of Lancaster; any thing abovesaid to the contrary in anywise notwithstanding.

College of Attle-
borough.

36. Provided always, and be it enacted by the authority aforesaid, that this act, ne any thing therein contained, shall extend to the college or chantry of Attleborough, in the county of Norfolk, which the said late King Henry the Eighth gave to Robert, late Earl of Sussex, and to his heirs; but that Henry, now Earl of Essex, son and heir to the said late earl, his heirs and assigns, shall and may by the authority of this act, have and enjoy the said college and chantry, and all manors, lands, tenements, advowsons, tithes, pensions, portions, and other hereditaments thereunto belonging or appertaining, any thing in this act to the contrary in anywise notwithstanding.

Alteration of
obits.

37. Provided always, and by the authority aforesaid be it enacted, that the King's Majesty at any time when it shall seem to him good, may give authority to certain his Grace's commissioners, to alter the nature and condition of all manner of obits, as well within the universities of Cambridge and Oxford,

as

1547.

as in any other place within this his Grace's realm of England and Wales, being not suppressed, ne annihilatę by virtue of this present act, and the same obits so altered, to dispose to a better use, as to relief of some poor men being students, or otherwise.

38. Provided also, and be it enacted by authority aforesaid, that it shall not be lawful to any person or persons, bodies politic or corporate, by reason of any remainder, use or condition, to enter into, claim or challenge any lands, tenements or hereditaments, for the non-doing, not naming or non-finding of any such priest or priests, or poor folks as is aforesaid, obit, anniversary, light or lamp, from henceforth to be founded or done; any thing herein contained to the contrary in anywise notwithstanding.

No advantage shall be taken of any condition, for not finding of any priest, obit, light, &c.

39. Provided always that this act, nor any thing therein contained, shall in anywise extend to any lands, tenements, possessions, or hereditaments whatsoever, that any master, dean, prebendary, warden or chantry, or any stipendiary priest of any college, chantry, prebend, fraternity, guild, or any other corporations have, or held of any person or persons, by any copy of court-roll, or at will, according to the custom of any manor or manors; nor give or grant any copyhold lands to the King's Highness.

Copyholds.

40. And also provided, that the King's Highness, his heirs or successors, shall not in anywise have, hold, enjoy or take, by virtue of this act, or any article therein contained, any manner of copyhold lands, tenements, possessions or hereditaments, whatsoever they be; but that all and every of the said persons and incumbents shall have, hold and enjoy the same during their lives, towards their pension and yearly living, paying their rents, and doing their customs and services thereof due and accustomed; any thing in this act to the contrary notwithstanding.

Who shall have the copyhold lands.

41. Provided, that this act shall not extend to any lands, tenements or hereditaments assigned, appointed or intended for the finding and maintenance of any chantry priest, or stipendiary priest, which by any former right and good title, without fraud or covin, were lawfully recovered from the possession of any such chantry priest or stipendiary priest, before the first day of October, in the said seven-and-thirtieth year of the reign of the said late King Henry the Eighth, which lands, tenements and hereditaments, were not charged, nor chargeable to the payment of the perpetual tenth; any thing in this act to the contrary hereof notwithstanding.

Lands recovered from a chantry priest by good title.

42. Provided always, and be it enacted by the authority aforesaid, that all and singular grants, licenses, confirmations and letters-patent, which our late Sovereign Lord King Henry the Eighth, or our Sovereign Lord the King that now is, have made under the great seal of England, to any person or persons, bodies politic or corporate, of any college, chapel or chantry, now being in esse or standing or now not being in esse or not standing, or of any lordships, manors, lands, tenements and hereditaments annexed, united, belonging or appertaining to any college, chapel or chantry, now being in esse or standing, or now not being in esse, or not standing, or of any other thing or things mentioned or expressed in this act, and all and every matter and thing mentioned, expressed or contained in any such grant, license, confirmation, or letters-patent, shall from henceforth be deemed, taken, expounded and judged good and effectual in the law, according to the words, sentences, meanings, intents, form and effects of the same grants, licenses, confirmations and letters-patent, to all intents, constructions and purposes, as if this act, and the said act made in the said seven-and-thirtieth year of the said late King Henry the Eighth, had never been had or made: and that this act, or the said act made in the seven-and-thirtieth year of the reign of our said late Sovereign Lord King Henry the Eighth, or any clause, article, sentence, or other thing therein contained, shall not extend to any colleges, chapels, chantries, or other thing or things mentioned in this act, now being in esse or standing, or now not being in esse, or not standing, or to any manors, lands, tenements, possessions, revenues or hereditaments annexed, united, belonging or appertaining to any college, chapel, chantry, or other thing mentioned in this act now being in esse or standing, or now not being in esse or not standing, or to any other thing or things mentioned

A confirmation of letters-patent made by King H. 8. or King Ed. 6. of any chantry, &c. lands united to them.

1547.

tioned or expressed in this act, which any person or persons, bodies politic or corporate have had or obtained, by the assent, license, confirmation, grant, or letters-patent of the said late King, or of the King's Majesty that now is; nor shall extend to any manors, lands, tenements, revenues, possessions, hereditaments, or other thing or things mentioned, expressed or contained in any such license, confirmation, grant, or letters-patent; but that every such person and persons, bodies politic and corporate, their heirs, successors and assigns, and the heirs, successors and assigns of every of them, shall have, hold and enjoy, all and every the same colleges, chapels, chantries, manors, lands, tenements, revenues, possessions and hereditaments, and all and every other thing and things whatsoever, so by them had or obtained, by the assent, license, confirmation, grant, or letters-patent of the said late King, or of the King's Majesty that now is, according to the words, sentences, form, effect, meaning and intent of the same licenses, confirmations, grants, and letters-patent; this act, or the said act made in the said seven-and-thirtieth year of the reign of the said late King Henry the Eighth, or any clause, article, sentence, matter or thing mentioned, expressed or contained in any of the same acts to the contrary thereof in anywise notwithstanding.

1548.

2 & 3 E. 6. c. 13. 1 Gw. 58.

An Act for Payment of Tithes.

Tithes how to be paid.

WHERE in the parliament holden at Westminster the fourth day of February, in the twenty-seventh year of the reign of the late King of most famous memory, King Henry the Eighth, there was an act made concerning payment of tithes predial and personal: and also in another parliament holden at Westminster the twenty-fourth day of July, in the thirty-second year of the reign of the said late King Henry the Eighth, another act was made concerning the true payment of tithes and offerings; in which several acts many and divers things be omitted and left out, which were convenient and very necessary to be added to the same: in consideration whereof, and to the intent the said tithes may be hereafter truly paid, according to the mind of the makers of the said act, be it ordained and enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons in this present parliament assembled, and by the authority of the same, that not only the said acts, made in the said twenty-seventh and twenty-eighth years of the reign of the said late King Henry the Eighth, concerning the true payment of tithes, and every article and branch therein contained, shall abide and stand in their full strength and virtue; but also be it further enacted by the authority of this present parliament, that every of the King's subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield and pay, all manner of their predial tithes, in their proper kind, as they rise and happen, in such manner and form as has been of right yielded and paid within forty years next before the making of this act, or of right or custom ought to have been paid: and that no person shall from henceforth take or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he has justly divided or set forth for the tithe thereof the tenth part of the same, or otherwise agreed for the same tithes with the parson, vicar, or other owner, proprietary or fermor of the same tithes; under the pain of forfeiture of treble value of the tithes so taken or carried away.

Predial tithes.

The penalty for subtraction of predial tithes.

2. And be it also enacted by the authority aforesaid, that at all times whensoever, and as often as the said predial tithes shall be due at the tithing time of the same, it be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or serjeant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and the same quietly to take and carry away: and if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth; or willingly withdraw

1548.

withdraw his tithes of the same, or of such other things whereof predial tithes ought to be paid; or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take and carry away their tithes as is abovesaid; by reason whereof the said tithe or tenth is lost, impaired or hurt, that then upon due proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges and expenses of the suit in the same: the same to be recovered before the ecclesiastical judge, according to the King's ecclesiastical law.

3. And be it further enacted by the authority aforesaid, that all and every person which has or shall have any beasts, or other cattle titheable, going, feeding, or depasturing in any waste or common ground, whereof the parish is not certainly known, shall pay their tithes for the increase of the said cattle so going in the said waste or common, to the parson, vicar, proprietor, portionary, owner, or other their farmers, or deputies of the parish, hamlet, town, or other place where the owner of the said cattle inhabits or dwells.

Tithe of cattle feeding in a waste where the parish is not known.

4. Provided always, and be it enacted by the authority aforesaid, that no person shall be sued, or otherwise compelled to yield, give or pay any manner of tithes, for any manors, lands, tenements or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition real. 32 H. 8. c. 7. s. 5.

Discharge by law, statute, prescription or composition.

5. Provided always, and be it enacted by the authority aforesaid, that all such barren heath or waste ground, other than such as be discharged for the payment of tithes by act of parliament, which before this time have lain barren, and paid no tithes by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years next after such improvement fully ended and determined, pay tithe for the corn and hay growing upon the same; any thing in this act to the contrary in anywise notwithstanding.

Barren heath or waste ground.

6. Provided always, and be it enacted by the authority aforesaid, that if any such barren, waste or heath ground, has before this time been charged with the payment of any tithes, and that the same be hereafter improved or converted into arable ground or meadow; that then the owner or owners thereof, shall during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same before the said improvement; any thing in this act to the contrary in anywise notwithstanding.

7. And be it also further enacted by the authority aforesaid, that every person exercising merchandises, bargaining and selling, clothing, handicraft, or other art or faculty, being such kind of persons, and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as been common day-labourers) shall yearly at or before the feast of Easter, pay for his personal tithes, the tenth part of his clear gains, his charges and expenses, according to his estate, condition or degree, to be therein abated, allowed and deducted.

Personal tithes.

8. Provided always, and be it enacted, that in all such places where handicrafts-men have used to pay their tithes within these forty years, the same custom of payment of tithes to be observed and to continue; any thing in this act to the contrary notwithstanding.

Handicrafts-men having used to pay tithes.

9. And be it also enacted by the authority aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawful to the ordinary of the same diocese where the party that so ought to pay the said tithes is dwelling, to call the same party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the parties own corporal oath, concerning the true payment of the said personal tithes.

The ordinary may examine persons refusing to pay personal tithes.

10. Provided always, and be it enacted by the authority aforesaid, that all and every person and persons which by the laws or customs of this realm ought to make or pay their offerings, shall yearly from henceforth well and truly content and pay his or their offerings to the parson, vicar, proprietor, or their deputies

Offerings.

1548.

puties or farmers of the parish or parishes where it shall fortune or happen him or them to dwell or abide; and that at such four offering-days, as at any time heretofore within the space of four years last past, has been used and accustomed for the payment of the same, and in default thereof, to pay for the said offerings at Easter then next following.

Fish.

11. Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to any parish which stands upon, and towards the sea-coasts, the commodities and occupying whereof consists chiefly in fishing, and have by reason thereof used to satisfy their tithes by fish: but that all and every such parish and parishes shall hereafter pay their tithes according to the laudable customs, as they have heretofore of ancient time within these forty years used and accustomed, and shall pay their offerings as is aforesaid.

Houses.

12. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend in anywise to the inhabitants of the cities of London and Canterbury, and the suburbs of the same, nor to any other town or place that has used to pay their tithes by their houses, otherwise than they ought or should have done before the making of this act; any thing contained in this act to the contrary in anywise notwithstanding.

Ecclesiastical court.

13. And be it further enacted by authority aforesaid, that if any person do subtract or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrary to the true meaning of this act, or of any other act heretofore made, that then the party so subtracting or withdrawing the same, may or shall be convented and sued in the King's ecclesiastical court, by the party from whom the same shall be subtracted or withdrawn, to the intent the King's judge ecclesiastical shall and may, then and there, hear and determine the same according to the King's ecclesiastical laws: and that it shall not be lawful unto the parson, vicar, proprietor, owner, or other their farmers or deputies, contrary to this act, to convent or sue such withholder of tithes, obventions, and other duties aforesaid, before any other judge than ecclesiastical. And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the aforesaid causes of tithes, obventions, profits, emoluments, and other duties aforesaid, or in any of them, (and no appeal nor prohibition hanging) and the party condemned do not obey the said sentence, that then it shall be lawful to every such judge ecclesiastical to excommunicate the said party so as afore condemned and disobeying; in the which sentence of excommunication, if the said party excommunicate wilfully stand and endure still excommunicate by the space of forty days next after, upon denunciation and publication thereof in the parish church, or the place or parish where the party so excommunicate is dwelling, or most abiding, the said judge ecclesiastical may then at his pleasure signify to the King in his Court of Chancery, of the state and condition of the said party so excommunicate, and thereupon to require process *de excommunicato capiendo* to be awarded against every such person as has been so excommunicate.

A copy of the libel shall be delivered to the judge before a prohibition granted.

14. Be it further enacted by the authority aforesaid, that if any party at any time hereafter, for any matter or cause before rehearsed, limited or appointed by this act, to be sued or determined in the King's ecclesiastical court, or before the ecclesiastical judge, do sue for any prohibition in any of the King's courts where prohibitions before this time have been used to be granted, that then in every such case the same party, before any prohibition shall be granted to him or them, shall bring or deliver to the hands of some of the justices, or judge of the same court where such party demanded prohibition, the very true copy of the libel depending in the ecclesiastical court, concerning the matter wherefore the party demands prohibition, subscribed or marked with the hand of the same party; and under the copy of the said libel shall be written the suggestion wherefore the party so demanded the said prohibition: and in case the said suggestion by two honest and sufficient witnesses at the least, be not proved true in the court where the said prohibition shall be so granted and awarded, that then the party that is letted or hindered of his or their suit in the ecclesiastical

A consultation granted for default of proving a suggestion.

ecclesiastical court by such prohibition, shall upon his or their request and suit, without delay, have a consultation granted in the same case in the court where the said prohibition was granted; and shall also recover double costs and damages against the party that so pursued the said prohibition, the said costs and damages to be assigned or assessed by the court where the said consultation shall be so granted; for which costs and damages, the party to whom they shall be awarded may have an action of debt, by bill, plaint or information in any of the King's courts of record, wherein the defendant shall not wage his or their law, nor have any essoin or protection allowed or admitted.

1548.

15. Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter, cause or thing, being contrary or repugnant to or against the effect, intent or meaning of the statute of Westminster second, the fifth chapter, the statutes of *articuli cleri*, *circumspectè agatis*, *silva cædua*, the treatise *de regis prohibitionibus*, nor against the statute of *anno primo Edwardi tertii*, the tenth chapter, or any of them, nor yet hold plea in any matter whereof the King's court of right ought to have jurisdiction; any thing therein contained to the contrary in anywise notwithstanding.

Of what things a judge ecclesiastical shall not hold plea.

16. Provided nevertheless, where heretofore such a custom has been in many parts of Wales, that of such cattle and other goods as has been given with the marriage of any person, their tithes have been exacted and levied by the parsons and curates in those parts: which custom being dissonant from any part of this realm, as it seemed when the said country of Wales was through civil dissension uncultivated, for want of other sufficient profits that might otherwise grow to the curates and ministers there, to have been for that time tolerable; so now the country being well manured and husbanded, and the tithe is duly paid there, of corn, hay, wool and cheese, and of other increase of all manner of cattle, as it is commonly in all other parts of this realm, the same custom seems to be grievous and unreasonable, specially where the benefices are else sufficient for the finding of the said ministers and curates: that it be therefore enacted by the authority aforesaid, that from and after the first day of May next coming, no such tithes of marriage goods be exacted or required of any person within the said dominion of Wales, or marches of the same; any thing in this act contained, or any other act, custom, prescription had or made to the contrary hereof notwithstanding. Co. Lit. 159. a.

No tithes of marriage goods shall be paid in Wales.

13 El. c. 10.

1571.

Fraudulent Deeds made by Spiritual Persons to defeat their Successors of Remedy for Dilapidations, shall be void, &c.

WHERE divers and sundry ecclesiastical persons of this realm, being endowed and possessed of ancient palaces, mansion-houses, and other edifices and buildings belonging to their ecclesiastical benefices or livings, have of late years not only suffered the same for want of due reparations, partly to run to great ruin and decay, and in some part utterly to fall down to the ground, converting the timber, lead and stones, to their own benefit and commodity; but also have made deeds of gift, colourable alienations, and other conveyances of like effect, of their goods and chattels in their lives-time, to the intent and of purpose, after their deaths, to defeat and defraud their successors, of such just actions and remedies as otherwise they might and should have had for the same, against their executors or administrators of their goods, by the laws ecclesiastical of this realm, to the great defacing of the state ecclesiastical, and intolerable charges of their successors, and evil precedent and example for others, if speedy remedy be not provided:

Wrongs and frauds practised by divers ecclesiastical persons.

2. Be it therefore enacted by the Queen's most excellent Majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that if any archbishop, bishop, dean, archdeacon, provost, treasurer, chanter, chancellor, prebendary, or any other, having any

Remedy of the successor where the predecessor makes a frau-

1571.

W
 dulent deed
 to defeat him of
 dilapidations.

any dignity or office in any cathedral or collegiate church within this realm : or if any parson, vicar, or other incumbent of any ecclesiastical living whereunto do belong any house or houses, or other buildings, which by law or custom he is bound to keep and maintain in reparation, do from henceforth make any deed or deeds of gift or alienation, or other like conveyances of his moveable goods or chattels, to the intent and purpose aforesaid, that then the successor and successors of him that shall make such deed or deeds of gift or alienation, shall and may commence suit, and have such remedy in any court ecclesiastical of this realm, competent for the matter against him or them to whom such deed or deeds of gift or alienation shall be so made, for the amendment and reparation of so much of the said dilapidations and decays, or just recompense for the same, as hath happened by his fact or default ; in such sort as he might, should, or ought lawfully to have, if he or they to whom such deed or deeds of gift or alienation shall be so made, were executor or executors of the testament and last will of him that made such deed or deeds of gift or alienation, or were administrator or administrators of his goods or chattels ; any law, custom, or other thing to the contrary in anywise notwithstanding.

Leases and conveyances by spiritual persons.

18 Eliz. c. 11.
 sect. 1.
 14 Eliz. c. 11.
 sect. 17.

3. And for that long and unreasonable leases made by colleges, deans and chapters, parsons, vicars, and other having spiritual promotions, be the chiefest causes of the dilapidations, and the decay of all spiritual livings and hospitality, and the utter impoverishing of all successors, incumbents in the same : be it enacted by the authority aforesaid, that from henceforth all leases, gifts, grants, feoffments, conveyances or estates, to be made, had, done or suffered by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements, or other hereditaments, being any parcel of the possessions of any such college, cathedral church, chapel, hospital, parsonage, vicarage, or other spiritual promotion, or anyways appertaining or belonging to the same, or any of them, to any person or persons, bodies politic or corporate, (other than for the term of one-and-twenty years, or three lives, from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved, and payable yearly during the said term,) shall be utterly void and of none effect, to all intents, constructions and purposes ; any law, custom, or usage to the contrary anyways notwithstanding.

College leases and grants.

4. Provided nevertheless, and be it enacted by the authority aforesaid, that this act, nor any thing therein contained, shall be taken or construed to make good any lease, or other grant to be made by any such college or collegiate church within either of both the universities of Oxford and Cambridge, or elsewhere within the realm of England, for more years than are limited by the private statutes of the same college.

New leases made upon the surrender of old or former covenants.

5. Provided always, that this act shall not extend to any lease hereafter to be made upon surrender of any lease heretofore made, or by reason of any covenant or condition contained in any lease heretofore made, and now continuing, so that the lease to be made do not contain more years than the residue of the years of the former lease now continuing shall be at the time of such lease hereafter to be made, nor any less rent than is reserved in the said former lease. 4 Co. 120. 5 Co. 14. continued by 1 Jac. 1. c. 25. and 21 Jac. 1. c. 28. to the end of the next sessions of parliament, and further continued by 16 Car. 1. c. 4.

13 El. c. 20. 1 Gw. 63.

An Act touching Leases of Benefices, and other ecclesiastical Livings with Cure.

How long the lease of a benefice shall endure.

THAT the livings appointed for ecclesiastical ministers may not by corrupt and indirect dealings be transferred to other uses ; be it enacted by the authority of this present parliament, that no lease after the fifteenth day of May next following the beginning of this parliament, to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, and not being impropriated,

printed, shall endure any longer than while the lessor shall be ordinarily resident, and serving the cure of such benefice without absence above four-score days in any one year, but that every such lease (so soon as it, or any part thereof, shall come to any possession or use above forbidden, or) immediately upon such absence, shall cease and be void; and the incumbent so offending, shall for the same lose one year's profit of his said benefice, to be distributed by the ordinary, among the poor of the parish: and that all chargings of such benefices with cure, hereafter, with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this act, shall be utterly void.

2. Provided, that every parson by the laws of this realm allowed to have two benefices, may demise the one of them upon which he shall not then be most ordinarily resident, to his curate only, that shall there serve the cure for him; but such lease shall endure no longer than during such curate's residence, without absence above forty days in any one year. This act to continue to the end of the next parliament. 3 Car. c. 4. made perpetual. Note, that in this statute, these words [so soon as it, or any part thereof, shall come to any possession or use above forbidden, or] are repealed 14 Eliz. c. 11. sect. 14.

1571.

Further provisions relating hereto.

No benefice with cure shall be charged with a pension.

The parson's lease to his curate.

14 El. c. 11. § 14.

PROVIDED also, and be it enacted, that these words [so soon as it, or any part thereof, come to any possession or use above forbidden, or], which words are contained in the said statute made in the said thirteenth year, touching leases of benefices, and other ecclesiastical livings with cure, shall not be revived by this act, but remain discontinued, and shall from henceforth be omitted out of the said act; any thing in the said act, or in this act to the contrary notwithstanding.

1572.

Certain words contained in the statute of 13 El. c. 20. discontinued.

18 El. c. 11. 1 Gw. 64.

1576.

An Act for Explanation of the Statutes, intituled, Against defeating of Dilapidations, and against Leases to be made of Spiritual Promotions in some respects.

WHEREAS by the statute made in a parliament holden at Westminster the second day of April, in the thirteenth year of the reign of our most gracious Sovereign Lady, intituled, "An Act against fraudulent Gifts, to the Intent to defeat Dilapidations of Ecclesiastical Livings, and for leases to be granted by collegiate Churches," it was amongst other things enacted by the authority of parliament, that from thenceforth all leases, gifts, grants, feoffments, conveyances or estates to be made, had, done or suffered; by any master and fellows of any college, or by any dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements or other hereditaments, being any parcel of the possessions of any such college, cathedral church, chapter, hospital, parsonage, vicarage, or other spiritual promotion, or anyways appertaining or belonging to the same, or of any of them, to any person or persons, bodies politic or corporate; other than for the term of twenty-one years, or three lives, from the time of any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved, and payable yearly during the said term; shall be utterly void and of none effect, to all intents, constructions and purposes; any law, custom or usage to the contrary notwithstanding, as in the said act more plainly appeareth:

2. Sithence the making of which said estatute, divers of the said ecclesiastical and spiritual persons, and others, having spiritual or ecclesiastical livings, having from time to time made leases for the term of twenty-one years, or three lives, long before the expiration of the former years, contrary to the true meaning and intent of the said statute: be it therefore enacted by this present parliament, that

Leases.
Sequestrations.

Leases by spiritual persons, of their lands in lease.

1576.

Bonds or covenants for the renewing of leases.

Leases made before this statute.

In what case sequestration may be granted by the ordinary, of a benefice demised contrary to the statute of 13 El. c. 20. In what case the parishioners may retain the tithes.

that all leases hereafter to be made by any of the said ecclesiastical, spiritual or collegiate persons or others, of any their said ecclesiastical, spiritual or collegiate lands, tenements or hereditaments, whereof any former lease for years is in being, not to be expired, surrendered or ended within three years next after the making of any such new lease, shall be void, frustrate and of none effect; any law, usage or custom to the contrary notwithstanding.

3. And be it likewise enacted by the authority aforesaid, that all and every bond and covenant whatsoever hereafter to be made, for renewing or making of any lease or leases, contrary to the true intent of this act, or of the said act made in the said thirteenth year, shall be utterly void; any law, statute, ordinance, or other thing whatsoever to the contrary in anywise notwithstanding.

4. Provided always, that this act, nor any thing therein contained, shall extend or be prejudicial to make frustrate or void any lease or leases heretofore made by any of the said spiritual or ecclesiastical person or persons, or any of them, but that the same, and every of them are of the like force and effect, as they or any of them were before the making of this present statute; this act, or any thing therein contained to the contrary notwithstanding.

7. And whereas in one other statute made in the said thirteenth year of her Majesty, intituled, "An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure," one clause is contained, that the incumbent offending the purport of the said statute, shall for the same lose one year's profit of his said benefice, to be distributed by the ordinary among the poor of the parish, as by the said branch in the said last recited statute appeareth: be it therefore enacted by the authority aforesaid, that after complaint made to the ordinary, and sentence given upon any offence committed by the incumbent, whereby he shall or ought to lose one year's profit of his benefice, as afore-shewed, that the ordinary within two months after such sentence given, and request to him made by the churchwardens of the said parish, or one of them, shall grant the sequestration of such profits, to such inhabitant or inhabitants within the parish where such benefice shall be, as to him shall seem meet and convenient; and upon default therein by the ordinary, that it may and shall be lawful to every parishioner where the benefice is, to retain and keep his or their tithes, and likewise for the churchwardens of the said parish, to enter and take the profits of the glebe lands, and other rents and duties of every such benefice, to be employed to the use of the poor, as aforesaid, until such time as sequestration shall be committed by the ordinary, and then as well the churchwardens as parishioners, to yield account of, and make payment to him or them to whom such sequestration shall be committed; and that he or they to whom such sequestration shall be committed from time to time, shall justly and truly employ and bestow the said profits, or the true and just value thereof, without fraud or guile, to such uses as by the said statute is limited and appointed, upon pain of forfeiture of the double value of such withholden profits, to be recovered in the ecclesiastical court by the poor of the said parish. 4 Co. 120. Co. Lit. 44.

1593.

35 El. c. 3.

An Act for Explanation of the Statute made in the Thirty-fourth year of King Henry the Eighth, as well touching Grants made to his Majesty, as for Confirmation of Letters-Patent made by his Highness to others.

All abbey lands which came to the hands of King H. 8. &c. shall be adjudged to have been in his actual and lawful possession, &c. and all letters-patent made by him for the foundation

FORASMUCH as divers ambiguities, doubts and questions, have risen and been moved, as well touching divers surrenders, grants and conveyances made and granted by sundry late abbots, priors, and other religious and ecclesiastical persons, to the late King of famous memory, King Henry the Eighth, after the fourth day of February, in the seven-and-twentieth year of his reign, of divers their honours, manors, lands, tenements and hereditaments; as also touching and concerning the validity of the elections of such deans and chapters, and such colleges as were erected, ordained, made or founded by the said late King Henry the Eighth, after the said fourth day of February, in the said seven-and-twentieth year of his reign: and forasmuch as the same doubts and questions

questions seem not to be sufficiently remedied or provided for, by the statute made in the four-and-thirtieth year of the reign of the said late King Henry the Eighth, intituled, "An Act for Confirmation of Letters-patent," notwithstanding misnaming of any thing contained in the same :

2. Be it therefore declared, explained and enacted, by authority of this present parliament, that all and every honours, manors, lands, tenements and hereditaments, which at any time heretofore were the possessions of any abbey, monastery, priory, nunnery, or other religious or ecclesiastical house or houses, and which after the said fourth day of February, in the said seven-and-twentieth year of the said late King Henry the Eighth, came to the hands or possession of the said late King Henry the Eighth; or which were put in charge to or for his Highness in his court of Exchequer, or any other courts of the said late King, concerning his Majesty's revenues, or by any auditor, or other officer of the said late King; or which after the said fourth day of February, in the seven and twentieth year aforesaid, were granted or conveyed, or mentioned to be granted or conveyed, in or by any letters-patent whatsoever, made by the said late King Henry the Eighth, to any person or persons, bodies politic or corporate; were and shall be reputed, taken and adjudged to have been lawfully and perfectly in the actual and real possession of the said late King, and his heirs and successors, at such time as the same did so come to his Majesty's hands and possession, or were so put in charge, or granted or conveyed by the said late King Henry the Eighth, as aforesaid, notwithstanding any defect, want or insufficiency of, or in any surrender, grant or conveyance of the same honours, manors, lands, tenements or hereditaments, or any part thereof, to the said late King Henry the Eighth, or any other matter or cause whatsoever, by which his Highness was or might have been intitled to the same.

3. And be it further declared and enacted by the authority aforesaid, that all and singular letters-patent made by the said King Henry the Eighth, at any time after the said fourth day of February, in the said seven and twentieth year of his reign, for the erection, foundation, incorporation or endowment of any dean and chapter, or college, were and shall be reputed, taken and adjudged to have been good, perfect and effectual in the law, for all things therein contained, according to the true intent and meaning of the same; any thing, matter or cause to the contrary thereof in anywise notwithstanding :

4. Saving always unto all person and persons, bodies politic and corporate, their heirs and successors, and every of them, (other than the late abbots, abbesses, priors, prioresses, and other governors of such abbeys, monasteries, priories, nunneries, and other religious and ecclesiastical houses, and their successors, and such as pretended to be founders, patrons, or donors of the same, or any of them; or of any manors, lands, tenements or hereditaments belonging to the same, or to any of them (and their, and every of their heirs and successors) all such right, title, interest, claim and demand, as they, or any of them, or their, or any of their ancestors or predecessors might or ought to have had, of, in, to, or out of any such honours, manors, lands, tenements or hereditaments, before the said fourth day of February, in the twenty-seventh year of the reign of the said King Henry the Eighth, or before the making of such letters-patent by the said King Henry the Eighth, as if the said letters-patent made by the said King Henry the Eighth, and the foresaid statute made in the said four and thirtieth year of his reign, and this present act had never been made; this act, or any thing therein contained to the contrary notwithstanding.

1593.
of any dean and chapter, or college, shall be reputed good.

Other men's rights saved.

43 El. c. 1.

1601.

An Act for Confirmation of Grants made to the Queen's Majesty, &c. and of Letters-patent made by her Highness to others.

IN most humble wise beseechen your most excellent Majesty, the Lords spiritual and temporal, and the Commons in this your Highness parliament assembled, That whereas sithence the eighth day of February, in the five-and-twentieth year of your Majesty's reign, divers and sundry honours, castles, manors,

Assurances made to or for the Queen of any lands, &c. since Feb. 8.

1601.

anno 25 of her
reign; and all
letters-patent
made by the
Queen to others
since that time,
&c. confirmed.

A saving of the
right of others.

Grants of ma-
nors, lands, &c.
by letters-pa-
tent.

manors, lands, tenements, rents, reversions, services, and other hereditaments, have been conveyed and assured to your Highness, your heirs, and successors, by and from sundry persons and bodies politic, as well for the discharge and satisfaction of great debts and sums of money, as for other good considerations: That for the better assurances, confirmation and surety thereof, it may be enacted by authority of this present parliament, That all feoffments, fines, surrenders, assurances, conveyances and estates, in anywise conveyed, had or made to or for your Highness, by or from any person or persons, bodies politic or corporate, sithence the said eighth day of February, in the five and twentieth year of your Majesty's reign, of any honours, castles, manors, lands, tenements, rents, reversions, services and other hereditaments, for any debt, sum or sums of money, or other consideration whatsoever (other than conveyances or estates heretofore had or made by any ecclesiastical person or persons, or bodies politic or corporate, not having power or ability by the laws and statutes of this realm to make the same) shall stand, remain and be good and available in the law, to all intents, constructions and purposes, according to the true meaning, intent and purport of the same.

2. Saving to all and every person and persons, and to their heirs, bodies politic and corporate, and to their successors, and every of them (other than such person or persons, and their heirs and wives, being parties or privies to such conveyances or assurances, and every of them, bodies politic and corporate, and their successors, and every of them, of, or from whom the Queen's Highness hath had, obtained or purchased any manors, messuages, lands, tenements, rents, reversions, services or hereditaments, by exchange, gift, bargain, fine, feoffment, recovery, deed inrolled or otherwise) all such right, title, interest, use, possessions, rents, reversions, remainders, offices, fees, commons, profits, and commodities whatsoever, which they or any of them have, might or ought to have had, of, in or to the premises, or any part thereof, in as large and ample manner, form and condition, to all intents, constructions, and purposes, as if this act had never been had ne made; this present act or any thing therein contained to the contrary notwithstanding.

3. And whereas your excellent Majesty, sithence the said eighth day of February, in the five-and-twentieth year of your Highness reign, as well for divers and great sums of money, as also for divers and sundry other considerations, hath bargained, sold, given and granted by your Highness sundry letters-patent, indentures or other writings, sealed under the great seal of England, or the seal of the duchy of Lancaster, or the seal of the county palatine of Lancaster, as well to bodies politic and corporate, as to divers and sundry other your Highness loving and obedient subjects, divers and sundry honours, manors, lands, tenements, rents, reversions, services, and other hereditaments, in fee-simple, fee-tail, or for term of life, lives or years, as in the same several letters-patent, indentures and other writings is mentioned and declared, that to the intent the same letters-patent, indentures and other writings may be of good, available, and perfect force and effect, to all and every your Highness loving subjects, according to the true meaning and effect of the same: It may please your most excellent Majesty, that it may be enacted by authority of this present parliament, That as well all and singular letters-patent, indentures and other writings sealed under the great seal of England, or under the seal of the duchy of Lancaster, or the seal of the county palatine of Lancaster, heretofore made and granted by your Highness for any sums of money, or for and upon any other considerations, sithence the said eighth day of February, in the five-and-twentieth year of your Highness reign, as all other letters-patent hereafter to be made by your Highness, for any sum or sums of money, or other considerations, before the last day of this present session of parliament: And moreover, all other letters-patent within the space of one year then next ensuing, to be made by force of, or according to the purport or true meaning of the commission under the great seal of England now in being, for sale of your Highness lands to any body politic or corporate, or to any other person or persons whatsoever, of any honours, castles, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, advowsons, nominations,

pa-

patronages, annuities, rights, interests, entries, conditions, leets, courts, liberties, privileges, franchises, or of any other hereditaments with their appurtenances, or of any part or parcel of them, sealed with, or under the great seal of England, or under the seal of the duchy of Lancaster, or the seal of the county palatine of Lancaster, of whatsoever kind, nature or quality they or any of them be, or shall be reputed, known or taken, with their appurtenances, or any part or parcel of them, shall be good, perfect, and effectual in the law, and shall stand, be taken, reputed, deemed and adjudged good, perfect, sure, available and effectual in the law, against your Highness, your heirs and successors, according to the tenure and effect of the said letters-patent, indentures or other writings: The same to be expounded, construed, deemed and adjudged most beneficially for the patentees and grantees of the same, and their heirs, assigns, executors, and administrators, according unto the words and purport of every the said letters-patent, indentures or other writings, without any confirmation, license or toleration of your highness, your heirs or successors; any mis-naming, mis-recital, nor non-recital of any of the same honours, castles, manors, lands, tenements and other premises, or of any parcel thereof: Or any lack of finding of offices or inquisitions, of, and in the premises or any part thereof, whereby the title of your Highness therein, ought to have been found before the making of the same letters-patent, indentures or other writings. Or any mis-recital or non-recital of leases thereof made, as well of record as not of record: Or any mis-recital, non-recital, or not true mentioning in any such letters-patent, grants or writings, of your Majesty's own estate or estates, either of freehold or inheritance, of, or in the premises, or any part thereof, whereunto your Majesty hath been sithence the beginning of your reign, or hereafter shall be entitled, by any attainder, escheat, conveyance or assurance whatsoever: And in which letters-patent, grants or writings, no estate-tail formerly made, or supposed to be made, have been or shall be recited, and the reversion or remainder thereupon expectant in the same letters-patent, grants or writings granted or mentioned to be granted: Or any lack of the certainty, mis-casting, rating or setting forth of the yearly value and rate of the premises, or of the yearly rents reserved of and for the premises, or any parcel thereof, mentioned or contained in any of the said letters-patent or other writings: Or for that the premises be or any part thereof is valued at a more or less value in the said letters-patent or writings than the said manors, lands, tenements and other the premises, then were, or shall be in yearly value: or any mis-naming, or not true naming of the towns, hamlets, parishes or counties where the same honours, manors, lands, tenements, rents, hereditaments, and other the premises, and every parcel thereof, or any parcel thereof, lien or been: Or any lack of the true naming of the lands, tenements or hereditaments, or of the natures, kinds, sorts, qualities or quantities of the said possessions or hereditaments, or any parcel thereof: Or any lack of the true naming of the corporation: Or any lack of attornment, livery or seisin: Or of any mis-naming of any of the late tenants or farmers of the same honours, manors, lands, tenements and hereditaments, or any part thereof, so sold, granted or given: Or of any mis-naming of such person or persons, bodies politic or corporate, as at any time before the making of such letters-patent, were or shall be owners of the premises, or any part thereof, to the contrary notwithstanding.

4. Provided, That this act, nor any thing therein contained, shall not extend to make any letters-patent of any office or offices to be of any other effect, force or strength than the same letters-patent were, or should have been before the making of this act. Letters-patent of offices.

5. Provided also, that all and singular such patentees, grantees and donees, and every of them, which at any time heretofore, sithence the eighth day of February, have obtained and gotten of your Highness, or at any time hereafter, before the last day of this session of parliament, or within the space of one year then next ensuing, shall obtain and get of your highness by way of exchange, or for any sum or sums of money, or other considerations, any letters-patent of any manors, lands, tenements or hereditaments whatsoever, which at the date of the said letters-patent were or shall be of better and more yearly value to your highness, and so answered in yearly rent and farm, than was, is or shall be

1601.

Recompense for
the overplus of
lands sold by the
Queen.

Threescore
years purchase.

Grants to which
this statute does
not extend.

Patents of con-
cealed lands.

Patents made by
warrant of com-
missioners au-
thorized to make
composition
with others.

Patents decreed
to be void by
act of parlia-
ment, or in any
of the Queen's
courts of record.

be contained, mentioned and specified in any such letters-patent, or in the particulars or rates thereof, made or to be made by any auditor or auditors, surveyor or surveyors, or other officers, That then every such patentee, grantee or donee, their heirs, executors or assigns, and every of them, within one year next after office, or other due proof, order and decree thereof, made and had, or to be made or had within the space and term of ten years next after the end of this present session of parliament in the court of the exchequer, shall content and pay unto your Highness, your heirs and successors, for the same overplus, and more value of the same manors, lands, tenements and other hereditaments whatsoever, with their appurtenances so sold, given, granted or exchanged, as is aforesaid, after the rate of three-score years purchase; and according to such yearly value and rate as the same manors, lands, tenements and other hereditaments whatsoever were of, and were answered for at the time of the making of any such letters-patent, so made or to be made in manner and form aforesaid; any thing contained in any such letters-patent to the contrary in anywise notwithstanding.

6. Provided also, That this act, or any other proviso therein contained, shall not in anywise extend to confirm, ratify, or make good any lease or leases made or to be made by your Highness for term of life, lives or for years, whereupon the old and accustomed rents, or more, or as much in value, or more proportionably, for the lands and tenements so demised, or to be demised, be not, or hereafter shall not be reserved and yearly payable during the time and term of every such lease: Nor that this present act shall in anywise extend to revive and make good any letters-patent made of any office or offices, to any comptroller, customer, aulneger, searcher: Nor to any letters-patent of the grant of any other office or offices heretofore granted or made by your highness, which now be, or at any time heretofore have been annihilated, determined or made void, by judgment, by authority of parliament, or by decree: Nor to any patents to be made to any person or persons for term of years, or during the minority of any heir of any manors, lands or tenements, whereof any traverse hereafter shall be tendered within three months after any office found and certified into any your Highness courts of record: Ne to make any letters-patent made by your Highness of any office or offices, to be of any other effect, force or strength, than the same letters-patent were or should have been before the making of this act.

7. Provided also, That this act, or any thing therein contained, shall not extend to any letters-patent, or any gift or grant therein contained, which at any time heretofore have been, or hereafter before the last day of this present session of parliament, shall be made by your highness, to any person or persons, of any manors, lands, tenements, rents, reversions, services, or other hereditaments, by force of any information, suit, or suggestion made, or to be made to your highness, that the same manors, lands, tenements, and other hereditaments so contained in any such letters-patent, were concealed lands, or that the same or the profits thereof were unjustly withholden from your Highness, but that the same letters-patent, and every of them, shall stand, remain, and be in the same force, strength and effect, as they were before the making of this act, any thing in this act mentioned to the contrary notwithstanding.

8. And yet nevertheless, Be it declared and enacted by authority of this present parliament, That no letters-patent, nor any gift or grant in them contained, made or to be made by warrant of your Majesty's commissioners, authorised to make compositions with your Highness subjects for new letters-patent, or grants to be made unto them, are or ought to be taken, or should be deemed and taken, to be made by force of any information, suit or suggestion, that the manors, lands, tenements, or other hereditaments contained in the same letters-patent, were concealed lands, but that they and every of them shall be within the full meaning of this act, to be fortified and made good as other letters-patent (made without any suggestion, or information of concealment, or unjust withholding) been.

9. Provided always, That this act nor any thing herein contained, shall extend, or be taken to make good any letters-patent, indentures, or other writings, or any grant in them or any of them contained, which heretofore have been adjudged or decreed to be void in any of your Majesty's courts of record at Westminster,

Westminster, or by act of parliament; nor to make good any letters-patent, or any grant in them or any of them contained, of, or concerning licenses, powers, or privileges, commonly called monopolies; nor to make good any letters-patent or grants, of or concerning power, license, liberty, or authority given for execution of any penal statute or statutes, or for toleration or dispensation of, to, or with any offence prohibited by any penal statute or statutes; nor to make good any letters-patent to William Kirkham, gentleman, or to any other by his procurement, concerning which there hath been any act of parliament made heretofore, or any suit in your Majesty's Court of Star-Chamber, or Chancery.

1601.

Monopolies.
Patents touching penal statutes.

10. Saving to all and every other person or persons, and bodies politic and corporate, their heirs and successors, and every of them, all such right, title, interest, possession, estate, leases, rents, services, commons, and all other profits and commodities whatsoever, as they or any of them should or might have had before the letters-patent thereof made, as if this act had never been had made: any thing therein contained to the contrary notwithstanding.

Saving of rights.

11. Provided always that this act, or any thing therein contained, shall not extend to make good or available in law any letters-patent, or grant of the premises, or any part thereof, whereof there was or shall be any good and lawful estate tail, heretofore made by your Majesty, or any of your progenitors, or hereafter to be made by your Majesty, unless such estate tail be duly recited.

Patents of lands whereof there was an estate tail.

12. Provided always, and be it enacted by the authority aforesaid, that neither this act, nor any thing therein contained, shall extend to make good any letters-patent heretofore made by your Majesty, sithence the five-and-twentieth year of your Highness' reign, to any person or persons, and their heirs, for and concerning the manors, granges, lands, tenements, tithes, and other hereditaments whatsoever, set, lying, and being in the several parishes of Bakewell and Hartington, in the county of Derby, and in the several parishes of Rowcester, alias Rochester and Blower, in the county of Stafford, mentioned, or intended to have been conveyed unto Francis late Earl of Shrewsbury, by the late King of famous memory, King Henry the Eighth, by his Highness' letters-patent, bearing date at Westminster, the two-and-twentieth day of November, in the three-and-thirtieth year of the reign of the said late King; but for and concerning all other manors, lands, tenements, and hereditaments contained in any such letters-patent made since the said five-and-twentieth year of your Majesty's reign, the same shall be within the remedy and provisions of this present act of parliament, according to the purport, true intent, and meaning of the same.

Bakewell,
Hartington,
Rowcester,
Blower.

13. Provided always, that neither this act, nor any thing therein contained, shall extend to the ratifying or making good of any lease made by John May, late Bishop of Carlisle, deceased, to your Majesty, which was not enrolled before the first day of this session of parliament. 34 & 35 H. 8. c. 21. 1 Ed. 6. c. 8. 7 Ed. 6. c. 3. 4 & 5 Ph. & Ma. c. 1. 18 El. c. 2. 35 El. c. 3.

Leases made to the Queen by the Bishop of Carlisle.

Anno 1644. c. 45. [Scob. 74.]

1644.

How Tithes and other such Duties may be recovered.

WHEREAS divers persons within the realm of England and dominion of Wales, taking advantage of the present distractions, and aiming at their own profit, have refused, and still do refuse to set out, yield, and pay tithes, offerings, oblations, obventions, and other such duties, according to the law of the said realm; to which they are the more encouraged, both because there is not now any such compulsory means for recovery of them by any ecclesiastical proceedings, as heretofore hath been; and also for that by reason of the present troubles there cannot be had speedy remedy for them in the temporal courts, although they remain still due, and of right payable, as in former times.

Be it therefore declared and ordained by the Lords and Commons in parliament assembled, that every person and persons whatsoever within the said

1644.

Tithes shall be paid according to law.

Remedy in case of subtraction of tithes.

Complaint to be made to two Justices of Peace, who are empowered to hear and determine the same.

In case of non-payment within thirty days after notice.

Distress.

Commitment if no distress be found.

Appeal by party grieved to the Chancery.

realm and dominion, shall fully, truly, and effectually set out, yield, and pay respectively all and singular tithes, offerings, oblations, obventions, rates for tithes, and all other duties commonly known by the name of tithes, and all arrears of them respectively, to all and every the respective owners, proprietors, impropiators, and possessors, as well lay as ecclesiastical respectively, their executors and administrators of parsonages, vicarages, or rectories, either impropriate, or presentative, or donative, and of vicarages, and of portions of tithes respectively within the said realm and dominion, according to the law, custom, prescription, composition, or contract respectively, by which they or any of them ought to have been set out, yielded, and paid at the beginning of this present parliament, or two years before; and in all and every case, where any person or persons hath at any time since the beginning of this present parliament, or two years before, subtracted, withdrawn, or failed in due payment of, or hereafter at any time shall subtract, withdraw, or fail in due payment of any such tithes, offerings, oblations, obventions, rates for tithes, or any duty known by the name of tithes, or arrears of them, or any of them, as aforesaid, the person or persons to whom the same is, hath been, or shall be respectively due, his executors or administrators shall and may make his and their complaints thereof to any two Justices of Peace within the same county, city, town, place, riding, or division, not being patron or patrons of the church where such subtraction, withdrawing, or failure of payment hath been, or shall be; nor being interested any way in the things in question: which Justices of Peace are authorized hereby, and shall have full power to summon, by reasonable warning before-hand, all and every such person or persons against whom any such complaints shall be made to them, and after his or their appearance before them, or upon default made after the second summons, the said summons being made as aforesaid, and proved before the said justices by oath, which said justices hereby shall have power to administer the same, to hear and determine the said complaint, by sending for, and examining witnesses upon oath, which said oath the said justices are hereby also authorized to minister, and admitting other proofs brought on either side, and thereupon shall in writing under their hands and seal adjudge the case, and give reasonable costs and damages to either party, as in their judgment they shall think fit.

And be it further ordained by the authority aforesaid, that if any person or persons shall refuse to pay any such tithes or sums of money, as upon such complaint and proceeding shall be by any such justices of peace adjudged as aforesaid, and shall not within thirty days next after notice of such judgment in writing under the hand and seal of such Justices of Peace given to him or them, make full satisfaction thereof, according to the said judgment, in every such case the person and persons respectively, to whom any such tithes or sums of money shall be upon such judgment due, shall and may, by warrant from the said justices, or either of them, distrain all and every, or any the goods and chattels of the party or parties so refusing, and of the same to make sale, and to retain to himself or themselves so much of the monies raised by sale thereof, as may satisfy the said judgment, returning the overplus thereof to the party or parties so refusing. And in case no sufficient distress can be found, that then the said Justices of Peace, or any other Justices of Peace of the same county as aforesaid, shall and may commit all and every such person and persons so refusing, to the next common gaol of the said county, there to remain in safe custody without bail or mainprize, until he or they respectively shall make full satisfaction, according to the said judgment.

Provided always, and it is further ordained by the authority aforesaid, that if any person or persons shall think him or themselves unjustly dealt with, by or in any such judgment, as aforesaid, then he or they respectively shall and may thereof complain to the high court of chancery, where the cause between the parties shall be again heard and determined; which court shall hereby have full power and authority to summon the parties, and to hear and determine the same, and to suspend execution as the same court shall see cause; and to give final judgment therein with reasonable costs to the party or parties grieved by any such complaint brought before them.

Provided

Provided always, that this ordinance, or any thing therein contained, shall not extend to any tithes, offerings, yearly payments, or other ecclesiastical duties, due or to be due for any houses, buildings, or other hereditaments within the city of London, or the liberties thereof, which be otherwise provided for by act of parliament.

1644.

This not to extend to London.

Anno 1646. c. 64. [Scob. 99.]

1646.

Archbishops and Bishops abolished, and their Lands settled in Trustees.

FOR the abolishing of archbishops and bishops, and providing for the payment of the just and necessary debts of the kingdom, into which the same hath been drawn by a war, mainly promoted by and in favour of the said archbishops, and bishops, and other their adherents and dependents; be it ordained, and it is ordained by the Lords and Commons, in parliament assembled, and by the authority of the same, that the name, title, style, and dignity of Archbishop of Canterbury, Archbishop of York, Bishop of Winchester, Bishop of Duresme, and of all other bishops of any bishoprics within the kingdom of England and dominion of Wales, be from and after the fifth day of September, in the year of our Lord God 1646, wholly abolished and taken away, and are hereby abolished and taken away. And all and every person and persons are and be thenceforth disabled to hold the place, function, or style of Archbishop, or Bishop of any church, see, or diocese, now established or erected, or to be established or erected within the kingdom of England, dominion of Wales, or town of Berwick, or to use or put in ure any archiepiscopal or episcopal jurisdiction, or authority, by force of any letters-patent from the crown, made or to be made, or by any other authority whatsoever, any law, statute, usage, or custom to the contrary notwithstanding. And be it further ordained, and it is hereby ordained, that all counties palatine, honours, manors, lordships, sites, circuits, precincts, castles, granges, messuages, mills, lands, tenements, meadows, pastures, parsonages, appropriate tithes, oblations, obventions, pensions, portions of tithes, parsonages, vicarages, churches, chapels, advowsons, donatives, nominations, rights of patronage and presentation, parks, woods, rents, reversions, services, annuities, franchises, liberties, privileges, immunities, rights of action and of entry, interests, titles of entry, conditions, commons, courts-leet, and courts-baron, and all other possessions and hereditaments whatsoever, with all and every of their appurtenances, of what nature or quality soever they be, which now are, or at any time within ten years before the beginning of this present parliament, were belonging to the said archbishops or bishops, archbishoprics or bishoprics, or any of them, which they or any of them had held and enjoyed in the right of their archbishoprics or bishoprics, dignities, offices, or places respectively; together with all charters, deeds, books, accounts, rolls, and other writings and evidences whatsoever, concerning the premises, or any of them, which do belong to any the said archbishops or bishops, archbishoprics and bishoprics, are vested and settled, adjudged and deemed to be, and are hereby in the real and actual possession and seisin of Thomas Adams, alderman, now Lord Mayor of the city of London, Sir John Wollaston, knight, Sir George Clark, knight, John Langham, alderman, John Fowke, alderman, James Bunce, alderman, William Gibbes, alderman, Samuel Avery, alderman, Thomas Noel, Christopher Pack, John Bellamy, Edward Hooker, Thomas Arnold, Richard Glide, William Hobson, Francis Ash, John Babington, Laurence Bromfield, Alexander Jones, John Jones, Richard Venner, Stephen Estwick, Robert Mead, and James Story, their heirs and assigns; and that they the said Thomas Adams, now Lord Mayor of the city of London, Sir John Wollaston, knight, Sir George Clark, knight, John Langham, alderman, John Fowke, alderman, James Bunce, alderman, William Gibbes, alderman, Samuel Avery, alderman, Thomas Noel, Christopher Pack, John Bellamy, Edward Hooker, Thomas Arnold, Richard Glide, William Hobson, Francis Ash, John Babington, Laurence Bromfield, Alexander Jones, John Jones, Richard Venner, Stephen Estwick, Robert Mead,

The name and title of archbishop and bishop abolished.

The lands, possessions, and evidences of archbishops and bishops settled in trustees.

Trustees.

1646.

Lands held of the King, to be holden as of the manor of East Greenwich.

And the lands holden of other lords, by the rents and services accustomed.

And discharged of tithes.

Mead, and James Story, and the survivor and survivors of them and their heirs, and assigns, shall hold all such the premises as are now held of the King, his heirs and successors, as of his manor of East Greenwich, in fee and common socage by fealty, and the annual rents therefore respectively due, and payable within ten years last past, before the beginning of this present parliament, and not in capite, nor by other tenures or services; and shall hold all and every the premises which the said archbishops and bishops held of any other than of the King, by the rents and other services therefore due, and of right accustomed; and the said trustees, their heirs, assigns, farmers and tenants, shall also have, hold, and enjoy the premises, and every of them, freed, acquitted, and discharged of and from the payment of tithes, as fully as the said archbishops and bishops did hold and enjoy, or ought to hold and enjoy the same, at any time during the space of ten years aforementioned, or any time since. And it is further by the same authority ordained, that the said trustees shall have power, and are authorized to make, nominate, and appoint, from time to time, fit and able persons, such as they shall think fit, to survey the premises in any county or counties of England and Wales, and to hold court of surveys, and to demand, receive, and in safe custody to put all the said charters, deeds, books, accounts, rolls, writings, and evidences, that they may be put in such place in the city of London, as the said persons before named; or the major part of them, shall order and appoint. And the said trustees, or any three or more of them, as aforesaid, are hereby authorized and required to administer an oath unto all and every the surveyors, who shall take the same before he shall execute the said place, in these words; viz.

I, A. B. do swear, that I will faithfully and truly, according to my best skill and knowledge, execute the place of a surveyor, according to the purport of an ordinance, intituled "An Ordinance of Parliament for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling of their Lands and Possessions, upon Trustees, for the Use of the Commonwealth." I shall use my best endeavour and skill to discover the estates therein mentioned, and every part thereof, which shall be given me in charge, and to find out the true values and improvements thereof; and thereof shall make true particulars, according to my best skill and cunning; and the same from time to time deliver in writing close sealed up, unto the said trustees, or any two of them, according to the true intent and meaning of the said ordinance; and this I shall justly and faithfully execute, without any gift or reward, directly or indirectly, from any person or persons whatsoever.

Leases not exceeding three lives, or one-and-twenty years, whereupon the old rent is reserved, are not to be avoided.

Leases made since the first of December, 1641, by bishops, to be void.

Nevertheless it is declared and ordained, that the said persons before named, their heirs and assigns, shall have and hold the premises, and every of them, subject to such trusts and confidence as both houses of parliament shall appoint, and declare and dispose of the same, and the rents and profits thereof, as the said houses shall order and appoint; wherein the Lords and Commons do declare, that due respect shall be had towards such persons and their assigns as are interested in the premises by virtue of any demise heretofore made: provided that the said trustees, their heirs, or assigns, shall not avoid any leases made for any term or estate, not exceeding three lives, or one-and-twenty years in possession, or in such manner as that together with the lease in being shall not exceed three lives, or one-and-twenty years, so as the old and accustomed rent and rents, or so much rent and rents as the ancient and accustomed rent amounted unto, be reserved payable during the said voidable term and terms or estates, and so as the said leases have not been procured or purchased of any bishop since the first day of December, *Anno Domini* 1641. And be it further ordained by the authority aforesaid, that if any archbishop or bishop have at any time since the first day of December, *Anno Domini* 1641, made any grant or lease to any person or persons, body politic or corporate, of any the honours, manors, lordships, messuages, lands, tenements, and hereditaments, or any other the premises aforesaid, or any of them, in right of their archbishoprics or bishoprics, the same grant or lease shall be utterly void and of none effect; and the person or persons, body politic or corporate, unto whom the same was made, shall have no benefit thereby: provided, and be it ordained,

1646.

ordained, and it is hereby ordained, that if any person or persons, body politic or corporate, at any time or times since the first day of December, in the year of our Lord God 1641, who had any grant or lease for one or more life or lives, or any number of years of the premises, or any part thereof, as is aforesaid, and surrendered the same, to the end that he or they might have a new grant or lease granted or made unto him or them, which by this present ordinance is made void, and the same was accordingly granted or made unto him or them: that the said person or persons, body politic or corporate, who hath so surrendered any such former grant or lease, his and their heirs, successors, executors, administrators and assigns, shall have, hold, possess, and enjoy, such time and term as he or they had in any part of the said premises by virtue of any such former grant, or lease, in such sort and manner as he or they should have had, held, and enjoyed the same, if no such surrender had been made, subject nevertheless to such payments of rent and other services, and such covenants, conditions, and agreements as in the said former grants or leases were expressed and contained, saving unto all and every person and persons, their heirs, executors, and administrators, bodies politic and corporate, and their successors, other than the King, his heirs and successors, all archbishops and bishops, and other than the founders and donors, as founders and donors of and to the said archbishoprics and bishoprics, and their heirs, all such right, title, interest, possession, rights in law, or equity, entries, annuities, commodities, fees, and other profits which they or any of them before the said first day of December, 1641, ought lawfully to have had in or to the premises, or any part or parcel thereof, as if this ordinance had never been had or made; also saving to all such person or persons as have adhered to the parliament, all such estate as he or they since the first day of May, *Anno Dom.* 1641, have forfeited or made forfeitable, for non-payment of rent, or not performing of services to any bishop or bishops, except it be in the case of a lease made utterly void by this ordinance, by reason the same hath been procured or purchased of any bishop since the aforesaid first day of December, *Anno Dom.* 1641; and likewise saving to Philip Earl of Pembroke and Montgomery, and his heirs, all such right as he and they have to the messuage called Duresme House, and certain stables, late of the possessions of Thomas Bishop of Duresme, situate in the parish of St. Martin's in the Fields, in the county of Middlesex, lately granted by act of this present parliament: this present ordinance, or any thing therein contained in any wise notwithstanding.

Provided also, and it is hereby further ordained by the authority aforesaid, that all and singular revenues, rents, issues, fees, profits, sums of money, and allowances whatsoever, as have heretofore been, and now ought to be paid, disposed, and allowed unto, and for the maintenance of any grammar school or scholars, or for or toward the reparation of any church, chapel, highway, causeway, bridges, school-house, alms-house, or any other charitable or pious use, or for maintaining of any lecture or preachers, payable out of any the premises, or which are chargeable, or ought to issue out of, or to be paid for, or in respect of the said premises, or any of them, shall be and continue to be paid and allowed as they were and have been heretofore; any thing in this present ordinance to the contrary in any wise notwithstanding. And it is further ordained, that the sheriff of every county and place, who is to attend the respective courts where any felony is to be tried and determined, shall provide and present to the judge or judges of such courts, some able and fit person to do such things as by the office of the ordinary have been used to be done; which person and persons shall have authority, and are hereby enjoined to perform that service in such manner as the respective ordinaries heretofore have used to do. Provided also, that all commissions upon the statute of charitable uses, shall be valid, though the bishop be therein omitted, and the other commissioners shall proceed therein as fully as they might have heretofore done when the bishop was therein named; and that all issues triable by the ordinary or bishop shall be tried by jury in usual course.

Those that have surrendered their old leases since December, 1641, shall enjoy their old terms.

Saving the right of all persons other than the King and bishops.

Saving to such persons as have adhered to the parliament, such estates as they have forfeited for non-payment of rent.

Rents payable to charitable uses, to be continued.

Sheriffs to present to the judges a fit person to perform the office of the ordinary.

Commissions upon the statute of charitable uses.

1646.

Anno 1646. c. 66. [Scob. 101.]

*Bishops Lands to be sold.*Recital of the
first ordinance.Recital of the
declaration.The trustees to
stand seised and
receive the rents
and profits of

WHEREAS by an ordinance of the Lords and Commons made the 9th of October, one thousand six hundred and forty six, the name, title, stile, and dignity of archbishop of Canterbury, archbishop of York, bishop of Winchester, bishop of Duresme, and of all other bishops of any bishoprics within the kingdom of England and dominion of Wales, from the fifth of September, one thousand six hundred and forty-six, is wholly abolished and taken away, and all and every person and persons are disabled to hold the place, function, or stile of archbishop or bishop of any church, see, or diocese, within the kingdom of England and dominion of Wales, by any authority whatsoever; and all counties palatine, honours, manors, lands, tenements, and hereditaments, and other the premises in the said ordinance mentioned, were and are vested and settled, adjudged and deemed to be in the real and actual possession and seisin of Thomas Adams, alderman, then lord-mayor of the city of London, Sir John Wollaston, knight, Sir George Clark, knight, John Langham, alderman, John Fowke, alderman, James Bunce, alderman, William Gibbs, alderman, Samuel Avery, alderman, Thomas Noel, Christopher Pack, John Bellamy, Edward Hooker, Thomas Arnold, Richard Glide, William Hobson, Francis Ash, John Babington, Laurence Bromfield, Alexander Jones, John Jones, Richard Vener, Stephen Estwick, Robert Mead, and James Story, their heirs and assigns, upon trust and confidence that the said persons before named, their heirs and assigns, should have and hold the premises, and every of them, subject to such trust and confidence as both houses of parliament should appoint, declare, and dispose of the same, and the rents and profits thereof, as the said houses should order and appoint. And whereas the said Lords and Commons, the thirteenth of October, one thousand six hundred and forty-six, have declared, they intending to raise the sum of two hundred thousand pounds for the present service of the state, that for the encouragement of such who shall advance any sum, for, and towards the same, and to the intent they might have notice thereof, that every person who has advanced any money, plate, or horses, with their furniture and arms, upon the public faith, may for every sum of money he shall further lend for the advancement of the said sum, be secured a like sum more out of the receipt of the grand excise in course, and the sale of the bishops lands, (except advowsons and impropriations) which shall first happen, together with all the interest after the rate of 8*l.* per cent. per annum, to be paid every six months out of the receipts of the excise, till principal and interest be fully discharged: as for example, if there be owing to any person 100*l.* principal, which with interest due thereupon for three years past, will make 124*l.* he adventuring 124*l.* more, may be secured for the whole 248*l.* as aforesaid: and so proportionably for a greater or lesser sum, and according to the interest due thereupon. And for the more speedy reimbursing of the said money secured and lent for the purpose aforesaid, that the said lands of the bishops (except before excepted) are estreated and made over to such feoffees for the speedy sale thereof, and such treasurers for the receipt of the monies, as may give satisfaction to the lenders, And have thereby further declared, that it shall and may be lawful for any person or persons to assign his right and interest in any sum or sums of money owing to him upon the public faith as aforesaid, to any person or persons that shall advance the like sum in manner as is before expressed. And therefore for and towards the satisfying of the said two hundred thousand pounds to be raised, or so much thereof as shall be raised, and of such money as according to the said declaration the said lenders are to be repaid for money, plate, horses, with their furniture and arms, advanced upon the public faith, with interest for the same, after the rate aforesaid, the said Lords and Commons have declared and ordained, and do hereby declare and ordain, that the said Thomas Adams and other the persons beforenamed, and the survivors and survivor of them, and the heirs of the survivor of them, shall stand and be seised of all and singular the said premises, so vested and settled in them,

1646.

the bishops
lands due after
first of Novem-
ber, 1646.

Power and au-
thority of the
trustees.

them, their heirs and assigns (except parsonages appropriate, tithes, tithes appropriate, oblations, obventions, portions of tithe, parsonages, vicarages, churches, chapels, advowsons, donatives, nominatives, rights of patronage and presentation) and shall take all the rents, revenues, issues, and profit, which were due and payable after the first of November, one thousand six hundred and forty-six, notwithstanding any sequestration of the same, and all other the rents, revenues, issues and profits, that shall at any time hereafter become due and payable for the said premises or any part of them, until sale shall be made of the same to the uses, intents, and purposes herein and hereafter declared. And be it ordained, that the said trustees, or the major part of them, shall have power and authority, and are hereby authorized, to take into their assistance such counsel learned, and to appoint such stewards of manors, and all other officers and persons, as they or the major part of them should hold fit and necessary for the putting of this ordinance in execution, and to give such fees, and make such allowance to the said counsel, stewards of manors, officers and persons as they shall hold fit and necessary. And to make warrants to the treasurers for the payment of the same, who are hereby required to pay the same accordingly, until sale shall be made of the premises, to the uses, intents, and purposes herein and hereafter declared as aforesaid; that is to say, that out of the money raised by the sale of the said premises, or any part of them that shall be sold, and out of the said rents, revenues, issues, and profits of the said premises or any part of them, there shall be paid and satisfied the several sums of money, with interest at the rate aforesaid, that by this present ordinance are, or are intended to be paid and satisfied, together with all charges to be paid or borne, for or by reason of the execution of the trust in them reposed; and after the full and due payment of the same, that they, their heirs, executors, and administrators respectively, shall stand seised and possessed of such of the said counties-palatine, honours, manors, lands, and premises remaining unsold: and of the monies raised by sale of the premises, or of any part of them remaining undisposed, for the use and benefit of the commonwealth, as shall be limited and appointed by both houses of parliament.

And be it also ordered and ordained by the authority aforesaid, that John Blackwell, senior, of Moreclack, in the county of Surrey, esquire, Sir William Roberts, of Wisden, in the county of Middlesex, knight, Alderman Vyner, Colonel Richard Turner, James Russell, William Methold, Thomas Ayres, of London, esquire, William Prin, of Lincoln's-Inn, esquire, Robert Fenwick, of London, esquire, Timothy Middleton, of Standsted in the county of Essex, esquire, Edward Cresset, of London, esquire, shall have full power and authority, and hereby have full power and authority to treat, contract, and agree with any person or persons, for the sale of the said premises, or any of them in such manner as is hereafter limited. And that the said John Blackwell, and other the said persons last beforenamed, shall receive of the treasurers herein named, two-pence in the pound for every sum that shall be paid to the said treasurers, and all and every such contract and contracts, for the sale of the premises or any part thereof. And that the said trustees or any five of them shall have full power, and are hereby required to convey the premises or any part thereof, by bargain and sale inrolled, according to the statute, or otherwise by any good and sufficient conveyance, and assurance in the law, to any person or persons whatsoever, according to such contract or contracts as shall be made by the said contractors, or any six or more of them, and entered and certified to the said trustees as aforesaid by the register herein, or hereafter to be named by both houses of parliament: and the money that shall be raised by the sale thereof, to be employed according to the trusts and directions herein declared. And that all bargains of sale, conveyances, and assurances made of any estate or estates, in fee-simple, according to such contracts as shall be agreed upon between the purchasers and the said contractors beforenamed, shall be good and effectual in law.

Conveyances of
the premises.

And be it likewise ordained, that none of the said trustees shall be contractors, nor none of the contractors, nor any of them, nor any other to their or either of their use or uses, or in trust for them or any of them, directly or indirectly,

1646.

directly, shall or do purchase the said lands or any part of them; and if any contractors or any in trust for them, or any of them shall buy any lands, contrary to this ordinance, he or they shall forfeit the estate and money paid so for it. And every purchaser of any part of the premises, his heirs and assigns, shall have, hold, and enjoy the premises that shall be by him purchased, discharged of all trusts and accounts, whereunto the said trustees are, or may be liable by virtue of this present or the said recited ordinance.

And of all suits and questions that may arise or be moved upon pretence of sale at under values, or upon pretence that the sums by this ordinance intended to be paid, were satisfied before such sale made, and all other claims and demands whatsoever, saving the rents and interests saved by the said recited ordinance, and of all incumbrances made by the said trustees, or by any claiming under them, or any of them; and for the discharge of the trustees and contractors, it is further declared and ordained by the authority aforesaid, that all and every the said trustees and contractors, shall be, and are hereby discharged and saved harmless for whatsoever they, or any one or more of them shall do in pursuance of this ordinance; and that if any action shall be brought against them, or any of them, for any act done by them, or any of them, in execution of this ordinance or instructions herein mentioned, then they are hereby enabled to plead the general issue, and to give this ordinance in evidence, and if a judgment pass for them, they shall recover double costs; and it is further ordained and declared that the said lordships, manors, lands, tenements, and hereditaments vested in the said trustees by the said ordinance of parliament, intituled "An Ordinance of Parliament for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling of their Lands and Possessions upon Trustees, for the use of the Commonwealth," shall not be liable unto, but stand, and shall be free and discharged of, and from all manner of statutes, judgments, recognizances, dowers, jointures, and other acts and incumbrances whatsoever, had, made, done, or suffered, or to be had, made, done, or suffered, by, from, or under the said trustees, other than such conveyances and assurances as shall be by them had, made, done, or suffered in performance or pursuance of the sales and contracts by them to be respectively made according to the intent of this present ordinance; and saving unto all and every person and persons, bodies politic and corporate, their heirs, successors, executors, and administrators, all such right, title, and interest, as by the said ordinance intituled "An Ordinance of Parliament for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling of their Lands and Possessions upon Trustees, for the use of the Commonwealth," is or are thereby saved.

Saving of rights.

Provided, and it is further declared and ordained, that whereas the late bishop of Durham and other his predecessors bishops of Durham, have hitherto exercised and enjoyed as counts-palatine, sundry great franchises, liberties, and jurisdictions, commonly esteemed and called *jura regalia*, that this ordinance, nor any thing therein contained, extend not, nor be construed to extend to give power or authority to the persons herein-named, or any of them, to sell, dispose, or any way to contract for the said *jura regalia* belonging unto the said bishop or his predecessors as counts-palatine, or any of them; but that the same shall remain in the said trustees named in a late ordinance, intituled, "An Ordinance for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling their Lands and Possessions upon Trustees, for the use of the Commonwealth," to be disposed of as both houses of parliament shall think fit to appoint, any thing in this present ordinance to the contrary thereof contained in anywise notwithstanding.

Provided always, and it is further declared and ordained, that whereas the late bishop of Ely, and other his predecessors bishops of Ely, have hitherto exercised and enjoyed sundry great franchises, liberties, and jurisdictions, commonly called *jura regalia*, that this ordinance, nor any thing therein contained, extend not, nor be construed to extend to give power or authority to the persons

1646.

sons herein named, or any of them, to sell, dispose, or any way to contract for the said *jura regalia* belonging to the said bishop or his predecessors, or any of them, but that the same shall remain in the said trustees named in a late ordinance, intituled, "An Ordinance for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling their Lands and Possessions upon Trustees for the Use of the Commonwealth," to be disposed of as both houses shall think fit and appoint, any thing in this ordinance to the contrary thereof contained in anywise notwithstanding. Provided also, that the buildings, fabric, or site of any cathedral church or churches, or any chapels belonging to such cathedral church or chapels, or any churches, churchyards, or places used for burial, shall not be sold or disposed of by virtue of this ordinance, any thing therein contained to the contrary notwithstanding. Provided always, that the trustees and the treasurers for the time being, by virtue of this ordinance, shall pay, or cause to be paid unto the assembly of divines, their constant pay and allowance allowed unto them by former orders of parliament, with all their arrears, out of the rents, revenues and profits, belonging to the late archbishop of Canterbury, until such time as the lands and revenues aforesaid shall happen to be sold away by virtue of this ordinance.

Cathedral churches, churches, chapels, and churchyards, not to be sold.

Proviso for payment of the assembly of divines, until, &c.

And it is further ordained, that if any person or persons, body politic or corporate, who shall be purchasers of any part of the premises, shall hereafter be evicted out of any part of the premises by virtue of an eigne right, title, or interest in or unto the same; that in such case the said purchaser and purchasers so evicted, shall have full and due satisfaction, recompense, and allowance made to him and them for the monies paid or advanced for the said purchase, and that in such manner as both houses of parliament shall think fit. And if it be required by the purchaser or purchasers, or any of them, their, or any of their heirs or assigns, one or more acts of parliament, or letters-patent under the great seal of England, by authority of parliament, shall hereafter pass or be made for the further assuring of the premises, or any part of them, unto such purchaser or purchasers, their heirs or assigns requiring the same.

And be it further ordained, that all rents, revenues, issues, and profits, and all sum and sums of money that shall be due or payable by virtue of this present ordinance for sale of any of the premises, shall be received by the said William Gibs, alderman, Thomas Noel, and Francis Ash, who are hereby constituted, authorized, and appointed to be treasurers for the receiving, issuing, and paying out the same at Goldsmiths-Hall, or any other place where the trustees, or the major part of them shall from time to time think fit, within the city of London; and are hereby authorized and appointed to take and receive the subscriptions of every person or persons, bodies politic or corporate, that shall subscribe any sum or sums of money, for, and towards the raising of the said two hundred thousand pounds intended to be lent. And it is hereby ordained, that the said treasurers, or any two of them, shall be, and are hereby authorized, upon the receipts or certificates given by the former treasurers, receivers, or collectors, to any person or persons, of what was formerly advanced by them in money, plate, horse, furniture, or arms, upon the public faith, or hath, or shall be assigned unto them by any others, upon producing of the same to the said treasurers, or any two of them, to ascertain their principal and interest, and to give them receipts for the same: as also, for the new money subscribed and paid by virtue of this present ordinance, in the name of the parties to whom the same is owing, or so assigned; which receipts given by the said treasurers shall be a good and sufficient ground to such persons to whom the same shall be so given, their executors, administrators, successors and assigns, to require the sum and sums of money therein mentioned: and further, that it shall and may be lawful for every person and persons, bodies politic or corporate, who shall have any monies due to him or them by virtue of this present ordinance, to grant and assign the same unto any person or persons whatsoever, and the same grant or assignment shall be good and effectual to all intents and purposes whatsoever, and allowed of by all person and persons whatsoever, to whom

The treasurers to ascertain the money, &c. advanced upon the public faith.

1646.

whom it shall appertain to make any allowance thereof, as if he or they had lent the same themselves.

And if any person or persons shall wittingly or willingly produce any false or forged acquittance or certificate to the said treasurers, thereby to defraud the commonwealth; the person or persons so offending, shall lose and forfeit his money lent towards the raising of the two hundred thousand pounds, or any way due to him for ready money, plate, horses, furniture, and arms, lent, or sent in by him upon the public faith, or assigned unto him as aforesaid; the benefit whereof shall be for the use and benefit of the commonwealth.

And be it further ordered and ordained by the authority aforesaid, that every person or persons who shall subscribe as aforesaid, and not bring in the money so by him or them subscribed, within eight days after such subscription, unto the treasurers appointed by this present ordinance for the receipt of the same, shall lose and forfeit the money that shall be due unto him upon the public faith, unless he shall shew unto the said trustees, or the major part of them, some reasonable cause to be by them allowed. And be it further ordained, that the said treasurers, hereby constituted and appointed for the receiving and issuing out of the said money, shall not issue or pay out any of the said sum of two hundred thousand pounds to be borrowed for the use of the commonwealth as aforesaid, but by ordinance of both houses of parliament: which ordinance, with the receipt of the party or parties to whom the money is appointed to be paid, shall be a good and sufficient discharge to the said treasurers, their heirs, executors and administrators: and the said treasurers shall not dispose, disburse, or pay any other sum or sums of money that shall come to their treasury, or be paid unto them out of the profits, or by sale of any of the premises, but by warrant of the said other trustees, or the major part of them; who are hereby required to give no warrant for the disposing, issuing or paying out of any sum or sums of money that shall be received by virtue of this ordinance, but for the purposes in this ordinance contained. And if any warrant shall be made for any other purpose, the same shall be void.

And be it further ordained by the authority aforesaid, that as the said treasurers shall receive ready monies, by sale of the premises, or by receipt of the rents and profits of the same, deducting charges and allowances, they shall pay and divide the same to the lenders, one-fourth part of their whole debt that shall be owing to them in course, as they did pay their money, with the interest then due; and so from time to time, till the whole be paid. Provided always, and it is hereby declared, that it shall and may be lawful for every lender or lenders, who shall become a purchaser of any part of the said premises, to defalk, or retain any money that shall be due unto him by virtue of this present ordinance, upon every purchase that he or they shall make, if the sum by him lent shall not exceed the value of the purchase, or so much thereof as the same shall amount unto. And the said treasurers shall allow the same accordingly.

And be it further ordained, that the said treasurers shall keep true and perfect books of accounts of all their receipts, disbursements and payments, and shall give their accounts to the committee for taking the accounts of the whole kingdom for the time being; who are hereby required to take the same every six months, and thereupon to give just discharges to the said treasurers. And after such discharges, the said treasurers, their heirs, executors and administrators, shall not be further questioned for, or concerning any of the matters for which they have had and received such discharges.

And further, the said treasurers shall have deducted and paid unto them the sum of one penny in the pound, for all monies by them to be received and paid.

And to the intent that, according to the true meaning of the said first recited ordinance, the true contents and value of all and singular the premises may be known, and the best benefit and advantage of them may be made for the use and benefit of the commonwealth: be it ordained by the authority aforesaid, that Henry Elsyng, esquire, clerk of the House of Commons, shall be register and keeper of, and shall have the custody and keeping of all records, charters, evidences, court rolls, ledger books, writings, books of survey, rentals, certificates,

cates, and other things of or concerning the lands and possessions of the late archbishops and bishops, or concerning any the counties-palatine, honours, manors, castles, lands, tenements, hereditaments, or other the premises in the above recited ordinance, and herein mentioned.

And that all and every the surveyors of the premises shall make their returns of all and every their respective surveys by them taken from time to time, to the said Henry Elsyng, who shall make entry of all such surveys, certificates, and other proceedings, as shall from time to time be returned or certified by the said surveyor or surveyors of the premises; and shall also make forth, rate, and sign all and every particular and particulars of the premises, or any part thereof, whereupon any contract or contracts for sale or otherwise, shall, or is to be had or made.

And all and every the said contractors shall certify all contracts so by them, or any of them, made to the said Henry Elsyng accordingly, who shall make entry of all and every such contract and contracts, and other proceedings thereupon: every which said particular and particulars of the premises so to be made forth under the hand of the said Henry Elsyng, shall be from time to time a good and sufficient authority to and for the said contractors, or any six or more of them, to contract, agree, or proceed thereupon; to have, hold, execute, and enjoy the said office or place of register and keeper, by himself, or his sufficient deputy, together with the yearly fee of one hundred pounds *per annum*, payable out of the receipts, rents, and revenues arising out of the premises, by the hands of the treasurers hereinbefore mentioned; on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, quarterly, by equal portions; and other reasonable fees for writing, rating, and signing of the said particulars, and otherwise in the execution and discharge of the said place.

Provided that the said register and keeper shall have but three-pence the sheet, of all things that are to be copied, and to write fifteen lines in each sheet. Which said yearly fee of one hundred pounds, the said treasurers are hereby required and authorized to pay accordingly; and that the acquittance of the said Henry Elsyng shall be a good discharge to the said treasurers, and every of them, for the payment thereof as aforesaid.

And it is hereby further ordered and ordained by the authority aforesaid, that the said trustees, or the major part of them, the survivors of them, or the major part of them, their survivors, and the heirs of the said survivors, shall and may from time to time nominate and appoint under their hands and seals respectively, so many persons as they shall think fit to be surveyors for the putting of this ordinance in execution, touching the surveying of the premises; who shall have power to go into all and every the counties, cities, and places within the kingdom of England and dominion of Wales, or into so many of them as shall be thought fit.

Appointment of
surveyors.

And it is further ordained by the authority aforesaid, that the said surveyors, or other persons to be authorized as aforesaid, or any three or more of them, shall have full power and authority to enter into and survey all or any of the premises, or any part thereof; and they, or any three or more of them, shall also have full power and authority, as well by the oaths of good and lawful men, as by all other good and lawful ways and means, to inquire and find out what county-palatine, honours, manors, lordships, granges, messuages, lands, tenements, meadows, leasaws, pastures, woods, rents, reversions, services, parks, annuities, and other possessions, privileges, liberties, immunities, and hereditaments whatsoever, of what nature or quality soever they be, lying or being within every such county or city as aforesaid, did at any time belong or appertain unto all, every, or any such archbishops or bishops, in right of archbishoprics, bishoprics, dignities, or places respectively, or to any other person or persons in trust for them, or any of them, as aforesaid, in right of the said archbishoprics and bishoprics, and what, and how much of the same is in possession, and the true yearly value thereof, and what and how much thereof is in lease, and for what estate, and when and how determinable; when such leases or estate was made, and whether antedated, and what rents, services,

1646.

Pious and charitable uses.

Surveys, certificates, charters, &c.

services, and other duties are reserved and payable during such estate, or issuing out of the same. As also what rents, pensions, charges, or other sums of money are issuing, due, or payable out of the premises, or any part thereof: and what lands or premises are subject or chargeable to, and with any good, pious, and charitable use or uses, and the certainty of the same; and to make one or more exact and particular survey or surveys, and certificates of their proceedings, which certificate and surveys shall be recorded, and all charters, evidences, court-rolls, and other writings belonging to all or any the archbishops, bishops, archbishoprics, or bishoprics, or concerning any of the counties-palatine, honours, manors, castles, lands, tenements, hereditaments, or any other the premises before mentioned, shall be kept in such place in London, or Westminster, as the said trustees, or the major part of them shall think fit and appoint.

And that the said surveyors, or any three or more of them, shall have power and authority, so often as they shall be thereunto appointed by the said trustees, or the major part of them, to keep courts of survey within any of the counties-palatine, honours, manors, and premises; and to call before them any of the tenants or other persons whom they shall conceive to have any interest in any of the premises, to shew their writings and evidence, and discover what right, title, or interest, they or any of them have, or may claim, of, into, or out of the same, or any part thereof. And also to examine by oath or otherwise, any person or persons (other than such as have or claim to have interest or title therein) for, or concerning the discovery of the contents, metes, bonds, extents, titles, rents, improvements, valuations, and jurisdictions, of all or any of the premises: and for the discovery of any records, evidences, writings or memorandums concerning the same: And that as well the said trustees, or any three of them, as the said several surveyors so authorized, or any three or more of them as aforesaid, are hereby authorized to administer an oath concerning the premises, to any person or persons (other than such as have, or claim to have interest or title concerning such the premises as shall be in question): And also to commit to prison any person or persons (other than such as have, or claim to have any interest or title as aforesaid) that shall refuse to take such an oath, or discover his knowledge concerning the estate, title, or evidences of any the lands hereby intended to be sold and disposed of, or refuse to deliver such evidences and writings concerning the same, which are in his custody or power, and do not concern the maintenance or defence of his interest, or such rents and profits as he had title unto. And all justices of peace, sheriffs, mayors, bailiffs, and other persons, are hereby required to be aiding and assisting to the said surveyors, or any of them, in the executing of this ordinance: Provided that it shall not extend to the imprisoning of any peer of this realm.

And be it further ordered and ordained by the authority aforesaid, That the commissioners of excise and new impost for the time being, are hereby charged and required upon the certificate of the said treasurers, certifying what sum or sums of money are due and payable to any person or persons, bodies politic or corporate, by virtue of this present ordinance, to pay interest after the rate of eight pounds in the hundred for the same to every such person or persons, bodies politic and corporate, their executors, administrators, successors or assigns, at the end of every six months, during the time that the said sum and sums of money, or any part thereof shall remain unpaid; which certificate the said treasurers are hereby authorized and required to make accordingly.

And in case the whole two hundred thousand pounds, or so much thereof as shall be lent, and the interest thereof, and such other sum and sums as are payable by this present ordinance for money, plate, horses, with furniture and arms, formerly advanced with the interest thereof, shall not be satisfied by the treasurers aforesaid, before all sums of money charged upon the said excise or new impost, by virtue of any ordinance of both houses of parliament, made before the twentieth day of September last (except the two ordinances of parliament for ten thousand pounds, and four hundred pounds for the widows) shall be by the said commissioners of excise paid and satisfied; that then the said commissioners of excise upon the like certificate from the said treasurers as aforesaid, shall be and are hereby charged and chargeable to pay the same with interest as aforesaid,

or

or so much thereof as shall be then due and unpaid, and shall begin to pay the same when they have in ready money one-fourth part of the whole debt that shall be owing to the lenders in course, as they did pay their money, with the interest then due, and so continue until the whole money hereby secured to be paid and then unpaid, shall be fully paid and satisfied, in such manner as the treasurers before mentioned were appointed to pay the same; and the said certificates of the said treasurers with the receipt of the respective lenders, shall be a good discharge to the said commissioners of excise and every of them, for their payment of any sum or sums of money by virtue of this present ordinance: And to the end a just and true account and registry may be made and kept of all and singular the debts and monies owing by the parliament to such person and persons as shall advance or lend any sum or sums of money upon the security of the bishops lands, and the grand receipt of the excise in course, or which of them shall first be enabled to furnish monies for the repayment thereof, as also of all payments and disbursements which shall be made, or issue out of the same, Be it ordained by the authority aforesaid, that for and during the pleasure of both houses of parliament, there be and shall be one register accountant, who shall keep a true and plain account or accounts, of all and every debt and debts, due or owing by the parliament for plate, money, horse, or their furniture, to any person or persons, which shall have advanced or lent monies as aforesaid; and also of all such interest as is or shall be due upon, or for the same, which said register accountant shall have full power, and is hereby authorized to view, peruse, and take copies of all every books, writings, and entries, in whose hands or custody soever they or any of them are or shall be, wherein are, or ought to be registered or entered any monies, plate, or horses, with their furniture, which hath been lent, or set forth for the service of the parliament, to the end he may be the better enabled to discover and find out whether, according to the notes, entries and accounts, as shall be brought in upon the aforesaid advance, the plate, monies, horses, and furniture mentioned therein, were at the days and times therein contained truly and really lent, and set forth for the service of the parliament or not; and upon due examination made thereof, the said register accountant shall make true certificate of all such debts which he shall find to be justly charged, together with the interest due for the same unto the treasurer or treasurers for the time being, appointed by both houses of parliament for the receiving of the monies which shall be advanced upon the aforesaid security; upon whose approbation or allowance the said register accountant shall give due credit for the same upon account, that so it may plainly appear how much, and to whom the parliament is indebted; and when any monies are paid or issued forth, he shall also make the parties receiving the same debtor upon the same account, and perform all other requisite services appertaining to the said place.

And the said Lords and Commons, taking into their considerations the faithful and good service of Colonel Robert Manwaring, do hereby constitute and appoint him the said Colonel Robert Manwaring to be register accountant of all and singular the accounts and registries, which shall be kept of or concerning the premises; to hold, execute and enjoy the same office of register accountant, together with the yearly fee of two hundred pounds per annum, payable out of the rents and proceeds out of the bishops lands, by the hands of the treasurers thereof for the time being, on the five-and-twentieth day of March, and the twenty-ninth day of September, half yearly by equal portions. And for such clerks or under officers as shall be employed in and about the premises, the same shall be approved of by the said treasurers, and receive such reasonable salary for their service as the said treasurers shall from time to time think fit to allow.

And it is further ordained, That John Fowke, alderman of the city of London, shall be comptroller of all entries, receipts and payments, which shall be made to or by the said treasurers, and shall have power and authority by himself or his sufficient deputies, to keep account of all entries, receipts, payments, and discounts whatsoever, which shall be made unto or by the said treasurers; and the said comptroller and his deputies shall execute the said place of comptroller in the

1646.

the premises, according to the instructions hereafter mentioned, and such other instructions as the said comptroller shall from time to time receive from both houses of parliament.

And it is further hereby ordained, That the said John Fowke shall have for his salary the yearly sum of two hundred pounds to be paid him quarterly by the said treasurers, who are hereby authorized and appointed to pay the same, for which this present ordinance with his receipt shall be their sufficient discharge. And for the better securing of the principal monies and the interest herein mentioned, be it ordered and ordained, that the excise and new impost upon commodities mentioned in the ordinance of the eleventh of September, one thousand six hundred forty-and-three, or any ordinance or ordinances of this present parliament, made in explanation and continuance thereof, shall be continued, taken and put in due execution, until such time as all sums of money payable by virtue of this present ordinance shall be paid and satisfied; and the payment of the said monies to be due and payable by virtue of this ordinance shall not be debarred, put by, or deferred from being paid out of the said excise, as aforesaid, by any order or orders, ordinance or ordinances, of one or both houses of parliament, or otherwise by the payment of any other or further sum or sums of money, than the same was and is charged with upon the said twentieth of September last past (except as is before excepted).

And the commissioners for the said excise and new impost for the time being, are hereby charged and required not to dispose or pay any monies that they shall receive for the new impost or excise, after the same shall be charged in course as aforesaid with the payment of any of the principal money in this ordinance contained, until such time as the same, together with the interest, and every part thereof then behind and unpaid, shall be paid unto the person or persons, bodies politic or corporate, their executors, administrators, successors, or assigns, to whom, upon the certificate of the said treasurers as aforesaid, the same shall be found due for any sum of money that shall be lent for and towards the raising of the said two hundred thousand pounds now to be raised, and of the said sum of money heretofore lent upon the public faith, which, with the interest as aforesaid, is to be paid by virtue of this present ordinance.

This ordinance
pleadable in all
courts.

And be it further ordained by the authority aforesaid, That the said first recited ordinance, and this present ordinance, and every article, clause, and thing therein contained, shall be pleadable, and may be given in evidence in any of His Majesty's courts of justice, or other courts; and the judges of all the said courts are required to allow and admit the same.

And it is also ordered and ordained by the authority aforesaid, That if the trustees, or any of them, shall require it on the behalf of themselves or the lenders, one or more act or acts of parliament, or letters-patent under the great seal of England, shall be passed for their or any of their further security.

And it is lastly ordained, that this present ordinance, and the former recited ordinances, shall be printed, and published in all counties, and other cities, towns-corporate, parishes, towns, hamlets, and other places where the said trustees, or the major part of them shall think fit; and that the care of the true printing thereof is hereby referred to the said trustees, or the major part of them.

Provided always, and be it ordained by the said lords and commons, that neither this ordinance, nor any branch, clause, article, or thing therein contained, shall not extend to the great capital messuage, with the appurtenances, situate in Chancery-lane, London, commonly called or known by the name of Serjeants Inn, in Chancery-lane, wherein the judges and serjeants of the law have for a long time lodged and resided, and still do lodge and reside; nor to any part of Lincoln's Inn, in Chancery-lane, nor shall in any wise be prejudicial, or any disturbance to the quiet possession of the said judges or serjeants that now are, or shall at any time hereafter reside and lodge in the said messuage or to any of the society of Lincoln's Inn, within Lincoln's Inn aforesaid, any thing in this present ordinance contained to the contrary thereof in any wise notwithstanding; but that the said messuage and Lincoln's Inn aforesaid, with the appurtenances, shall continue and be houses of lodging and residence
to

to and for the said judges and serjeants, and other of Lincoln's Inn aforesaid, and for their use and benefit, in such manner as they have been used and accustomed at and under the yearly rents usually paid for the same, for the time that the said rents are to continue by any leases now in being. And that the said trustees, appointed by order of parliament for the bishops lands, and the survivor and survivors of them, their heirs and assigns, shall dispose of the said messuage, with the appurtenances, from time to time, as by the said judges and serjeants for the time being shall be directed and appointed; saving to all and every person and persons, other than the said bishops and their successors, all such right, title, and interest, as they or any of them have or ought to have to and in the premises.

Provided further, and be it ordained, that the said Serjeants Inn shall be in the disposing of both houses of parliament, after the expiration of any lease now in being; saving to all and every person and persons other than the said bishops and their successors, all such right, title, and interest, as they or any of them have or ought to have to and in the premises.

Provided always, that this ordinance shall not extend to the putting out of any stewards of any liberties or courts formerly appointed and made by virtue of any ordinance of parliament; but that they shall continue and be, during such time as the said liberties and courts shall remain and be in the hands of the aforesaid trustees, and that they shall have and receive all such fees, profits, and allowances, as formerly were allowed them, this ordinance, or any other ordinance, act, or thing to the contrary notwithstanding.

16th November, 1646.

Instructions for a Comptrol upon the Accounts of all Monies to be received and paid by or to the Treasurers appointed by this present Ordinance.

1. THAT the comptroller by himself, or his sufficient deputies, attend daily, according to the usual times, and be present at all receipts and payments made within the said treasurer's office, and make duplicates or entries of the same in fitting books, to be provided and kept for that purpose.

2. That every tenant of the premises, or any part thereof, and every purchaser of the premises, or any part thereof, upon every payment of any sum of monies that he shall make to the treasurer, shall enter his acquittance with the comptroller, which the comptroller shall enter without fee.

3. That the said treasurers, or their clerk to the cash, shall weekly, upon every Monday morning, deliver the comptroller, or his deputy, a copy of all receipts, payments, and disbursements, and to whom, during the preceding week, which the comptroller is hereby required to enter in a book to be kept for that purpose; and that no payment to be made by the said treasurers shall be allowed upon their account, unless an account thereof be weekly given as aforesaid.

4. That the register shall weekly, from time to time, make certificate to the comptroller of all rents, and of all rates of particulars, and of all monies payable upon any such particulars, contracts, or bargains made by virtue of this ordinance, which shall be forborne upon security, and how, and by whom the same is secured, and at what time payable; which certificate the comptroller shall enter in a book, to be by him kept for that purpose.

Instructions for Contractors for the Sale of the late Archbishops and Bishops Lands.

THAT the contractors shall be sworn before the trustees, or any three of them, according to their best skill and knowledge, faithfully to discharge the trust committed to them, and that they shall not for favour, affection, reward, or hope of reward, break the same trust; which said trustees, or any three of them, are hereby authorized to administer the said oath accordingly.

That the demesne lands of the late archbishops and bishops in possession shall not be sold under ten years purchase of the full values they were at in the year 1641. The same rule to be observed proportionably in the sale of reversions, expectant upon estates for lives or years.

That

1646.

Due respect to
the tenants of
the late arch-
bishops and
bishops.

That the due respect to be had by the contractors to the immediate tenants of any of the late archbishops or bishops, shall be in the admitting them to the pre-emption of those manors, lands, tenements, and hereditaments, wherein they have any interest, so as the said tenants do come within thirty days after the return of the certificates by the surveyors, and agree to purchase the same : and in case they do not agree within the said thirty days, that then the contractors do sell the same to any other person or persons that shall desire to purchase them, so as such sale be made at a higher rate than was offered by the said tenants.

That upon sealing of the assurance, the purchaser shall pay half his purchase-money down, and the other half within six months ; and for the last payment, the contractors shall take care that they take good security, either by the land itself, or else by personal security. The same security to be given to the treasurers.

That in all cases where any person or persons, that have lent any monies upon this ordinance shall be purchasers, their monies so lent shall be esteemed as so much paid towards their purchase, if it exceed not the moiety of the purchase-money ; and for what exceeds the moiety, that every such purchaser shall be allowed interest for it until the end of six months, wherein the remainder or total of the purchase-money is to be paid.

Instructions for the Surveyors of the late Archbishops and Bishops Lands, which are to be surveyed.

THAT the trustees as aforesaid shall have power to nominate one, two, three, or more surveyors to survey the premises, or any part of them, as they shall think fit ; and that the surveys and returns made by any such one, two, three, or more surveyors, shall be good and effectual to be proceeded upon, notwithstanding any clause in any ordinance of parliament to the contrary.

That the surveyor or surveyors appointed or to be appointed by the trustees, shall survey and inquire what timber, buildings, open quarries, or mines are upon any of the premises, and certify the condition and values thereof.

That no surveyor, or any his child or children, or any in trust for him or them, shall be admitted to be a purchaser of any part of the lands surveyed, or to be surveyed by himself, upon pain of losing his or their purchase-money, and the purchase to be void.

Provided, that nothing in the instructions, oath, or in this present ordinance, shall be construed to compel the surveyors to make any admeasurement of the lands, or any particular survey of the number of acres, unless they in their discretion shall think fit ; the intention of the houses being, that the said surveyors should make a speedy return of their several surveys, to the end that a speedy sale may be made thereupon.

Instructions to be observed by the Register.

1. THAT he do receive all surveys, and certificates to be returned by the surveyors, and immediately after the receipt thereof, fairly enter and register the same, in books to be kept by him for that purpose, and in an orderly manner file, bundle up, and safely lay up and keep the originals.

2. That he do weekly, or oftener, certify unto the contractors, what surveys and certificates are returned to him, and of what manors, or otherwise, as the case shall require.

3. That upon warrant, and direction from the contractors, he do make forth, and fairly ingross in parchment, particulars of all such manors, lands, tenements, and hereditaments, buildings, woods, and other things surveyed and certified, into his office by the surveyors, whereupon the contractors are to proceed, or intend to make any sale ; and that he do examine and sign the same particulars, and deliver them to the contractors.

4. That upon contract or agreement made by the contractors for any manors, lands, tenements, hereditaments, buildings, woods, or other thing contained in any particular made forth, signed and delivered unto them by the register, the said particular be returned to the register, together with the order of agreement or contract made with the purchaser thereupon.

4. That

5. That upon return thereof, he do forthwith rate the particular, and ascertain the purchase-money, how much it comes to, and how many years purchase the particulars contracted for are sold, and enter the same upon the said particulars, together with such other proceedings as shall be required by the contract.

6. That he do return the particular thus rated and ascertained to the contractors, who are to sign the same, to attest the agreement, and thereupon to desire and give warrant to the trustees to draw up and seal conveyances thereof to the purchasers accordingly.

7. That all particulars thus finished, together with all proceedings thereupon, be fairly entered or registered by the register, and be safely kept by him as records, and that after such entering and registering thereof, the register do deliver the said particulars unto the trustees, to perfect the sale as aforesaid.

8. And to the end this service may be performed in such manner as the register may be able from time to time to give an account of all proceedings (if he shall be required) to the parliament, himself, or one of his deputies, are to attend upon, and enter all orders and proceedings before the contractors.

9. That he do weekly make certificate to the treasurers, comptroller, and register-accountant, of all rents, and all rates of particulars, and of all monies payable upon any contract upon any particular, how much thereof is to be paid in hand, and how much to be forborne, and for what time, and how, and in what manner the sum or sums to be forborne are to be secured.

10. That he do methodize and put in good order all charters, evidences, and writings belonging to the late archbishops and bishops, and all books of survey, and other things to be delivered to his care and custody, to be kept by him as records, and make catalogues of them, and fit them in such manner as the subject may readily see, and have copies (if he do desire it) of whatsoever shall be brought into the register's office, and be under his charge and custody.

16th November, 1646.

Anno 1646. c. 67. [Scob. 111.]

The former Ordinance for the Sale of Bishops' Lands explained, with some Additions.

THE Lords and Commons assembled in Parliament do hereby declare and ordain, that Colonel Robert Manwaring, appointed to be register-accountant by the former ordinance for the sale of bishops lands, is, and be hereby authorized upon the receipts or certificates given by the former treasurers, receivers or collectors of money, plate, horse, furniture or arms, advanced upon the public faith, to ascertain the principal and interest thereof, and that his certificate to the treasurers appointed by the said former ordinance, shall be a sufficient voucher for them to proceed thereupon to the receiving of the money, and giving their receipts according to the former ordinance: and that twenty shillings per diem shall be allowed to the treasurers for their clerks and tellers, the said allowance to continue for a year, and to be distributed among them according to the discretion of the said treasurers. And that all other charges incident to the treasury, which shall be discharged and paid by the said treasurers, shall be allowed to them by the committee hereafter named, or any five of them. And that the comptroller appointed by the said former ordinance shall, upon the weekly account given unto him by the said treasurers, give a receipt or acknowledgement thereof in writing under his, or his deputies' hands to the said treasurers for their justification therein. And further, that the certificate of the commissaries and others authorized for the listing of horses, furniture, or arms, who have power to give the public faith for the same, shall be accepted and allowed for as good and sufficient as the receipts or certificates of the treasurers, collectors, or receivers of money or plate. And for the settling and determining of any further doubt which may arise concerning the validity of any warrant made by the trustees

1646.

of the bishops' lands to the said treasurers for the issuing out of any money, that the Earl of Northumberland, Earl of Kent, Earl of Rutland, Earl of Pembroke, Earl of Lincoln, Earl of Nottingham, Earl of Suffolk, Earl of Salisbury, Earl of Warwick, Earl of Denbigh, Earl of Middlesex, Earl of Manchester, Earl of Mulgrave, Earl of Stamford, Lord Viscount Hereford, Lord Viscount Say and Seal, Lord Berkly, Lord Dacres, Lord Wharton, Lord Willoughby, Lord North, Lord Hunsdon, Lord Montague, Lord Gray of Wark, Lord Roberts, Lord Maynard, Lord Howard, and Lord Bruce, Mr. Holles, Mr. Francis Allen, Sir Philip Stapleton, Mr. John Ash, Sir John Clotworthy, Sir Symonds D'ewes, Mr. Walter Long, Sir John Temple, Sir William Lewis, Sir William Spring, Sir John Hobart, Colonel Harvey, Mr. Got, Mr. Recorder, Sir Henry Vane, senior, Mr. Leigh, Mr. Reynolds, Mr. Tate, Sir John Evelin, of Surrey, Mr. Roll, Sir Samuel Roll, Mr. Bond, Mr. Bal, Mr. Nicol, Mr. Wilson, Mr. Blackiston, Mr. Pierpoint, Sir Peter Wentworth, Sir John Curson, Sir Walter Erle, Sir Robert Harley, Mr. Crew, Sir Gregory Norton, Lieutenant General Cromwell, Sir Robert Pye, Sir Edward Hungerford, Mr. Knightly, Sir John Burgoine, Mr. Rous, Mr. Strode, Sir Anthony Irby, Mr. Humphrey Edwards, Mr. Drake, Mr. Prideaux, Mr. Alderman Atkin, Sir Thomas Soame, Alderman Pennington, Mr. Vassal, and Colonel Ven, or any five of them, shall be, and are hereby constituted a committee of parliament for the purposes aforesaid, and shall hereby have power and authority to hear and determine the same in case the trustees or treasurers shall desire it. And that a warrant under any five of the hands of the said committee shall be a sufficient authority to them, and every of them, to proceed accordingly in the execution of the said ordinance. And it is hereby lastly declared and ordained by the authority aforesaid, that all persons, as well those who have not lent upon the public faith, as those who have, that shall advance or lend any sum of money for the purposes in the said ordinance mentioned until the two hundred thousand pounds intended by the said ordinance to be raised shall be brought in, shall have the same security for the repayment thereof, together with interest for the same; after the rate of eight *per centum*, as those who having formerly lent upon the public faith as aforesaid, and do now lend upon the said ordinance, are to have. 30th November, 1646.

Anno 1646. c. 68. [Scob. 112.]

An Alteration and Explanation of the Oath formerly appointed to be taken by the Surveyors of the Bishops' Lands, &c.

BE it hereby ordained by the Lords and Commons in this present Parliament assembled, and by the authority of the same, that instead of the oath formerly appointed to be taken by surveyors of the bishops lands, this oath following shall be taken by them respectively, *in hæc verba*.

I. *A. B.* do swear, that I will faithfully and truly, according to my best skill and knowledge, execute the place of surveyor, according to the purport of two several ordinances, the one intituled, "An Ordinance of Parliament for the abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling of their Lands and Possessions, upon Trustees, for the Use of the Commonwealth;" the other intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for appointing the Sale of the Bishops' Lands for the Use of the Commonwealth;" and according to the instructions thereunto added, I shall use my best endeavour and skill to discover the estate therein mentioned, and every part thereof, which shall be given me in charge, and to find out the true values and improvements thereof, and thereof shall make true surveys, according to my best skill and cunning; and the same from time to time deliver in writing close sealed up, unto Henry Elsyng, esquire, register in that behalf appointed, together with a true copy or duplicate thereof likewise close sealed up, unto the said trustees, or any two of them, according to the true intent and meaning of the said recited ordinances; and this I shall justly and faithfully execute, without any gift

gift or reward, directly or indirectly, from any person or persons whatsoever, except such allowances as the said trustees, or the major part of them shall think fit to make unto me for my pains and charges in the executing of the said place or office.

And be it further ordained by the authority aforesaid, that the said trustees, or the major part of them shall have power, and are hereby authorized, from time to time, to call to account any surveyor or surveyors, or other officers by them named and appointed. And if they shall find them, or any of them defective or unfaithful in performance of the duties or trusts in them reposed, then to remove them, or any of them which they shall so find defective or unfaithful, and to nominate and appoint others in their steads. Nevertheless, it is hereby ordained and declared, that the copies or duplicates of all surveys to be returned to the said trustees as aforesaid, so soon as assurances shall be made to the purchasers of the lands, or other things therein contained, shall forthwith be delivered over by the said trustees, or the major part of them, unto the register aforesaid, to be bundled up and safely kept by him in like manner as the other part of the said surveys returned to him by the said surveyors is appointed to be kept. And that the said trustees, or any employed by them, do not make entry of, or at any time make or deliver out any copies of the said duplicates for the use and benefit of any private or particular person, or otherwise, to the prejudice of the said register.

And be it lastly ordained, that this present ordinance shall be printed, and published in all counties, and other cities, towns-corporate, parishes, towns, hamlets, and other places where the said trustees, or the major part of them shall think fit. And that the care of the true printing thereof is hereby referred to the said trustees, or the major part of them. 24th December, 1646.

Anno 1646. c. 71. [Scob. 114.]

Further Explanations and Additions to the former Ordinances for Sale of Bishops' Lands.

WHEREAS by an ordinance of the Lords and Commons in this present Parliament assembled, made the sixteenth day of November, *Anno Dom.* 1646, among other instructions for the contractors in the said ordinance named, it is ordained that the demesne lands of the late archbishops and bishops shall not be sold under ten years purchase of the full values they were at in the year 1641, the same rule to be observed proportionably in the sale of reversions expectant upon estates for lives or years; the said Lords and Commons do hereby declare and ordain, that the said full value upon which the said contractors shall proceed to sale, shall be according to such particulars as shall be made and delivered to the said contractors under the hand of Henry Elsyng, register in the said ordinance named, and that such particulars so made and delivered to them, shall be a sufficient justification for them to proceed to sale accordingly. And further that the said register shall cause one faithful, able and sufficient clerk to be attending on the said contractors at all their meetings, and to enter all their orders and proceedings, and to observe and obey all such commands and directions concerning the premises, as they or any six or more of them shall direct and appoint. And that the said books of entries shall remain in the custody of the said contractors, or such of them as they or the major part of them shall appoint.

Provided that no copies of the said entries be made, had or taken out of the said books by any others than the said register or his deputy, or the said clerk, who are to have the use of them for that purpose. And that the said register and his deputy and the said clerk shall severally and respectively take an oath before the trustees or any three of them, (which they are hereby authorized and required to administer to them accordingly,) to execute the said respective offices and places according to the ordinances and instructions of both houses of parliament in that behalf made, and not for any fear, favour, malice, or reward to violate the said respective trusts in them reposed.

1646.

And whereas by the afore-recited ordinauces, it is ordained, that the said contractors shall receive two-pence in the pound for every sum that shall be paid to the treasurers upon all and every contract or contracts by them made, the said Lords and Commons do hereby declare and ordain, that they shall, instead thereof, receive two-pence in the pound for all such lands, tenements, and hereditaments, of the late archbishops and bishops which shall be contracted for, and sold by them, according to the rates for which they shall be sold.

And further the said Lords and Commons do hereby declare and ordain, that all such who have advanced and lent monies upon the afore-recited ordinance, shall be allowed and have all the same advantages and benefits for and concerning any monies otherwise due unto them by the afore-recited ordinance, as fully and amply to all intents and purposes whatsoever, as for and concerning any ready monies lent and advanced upon the said ordinance.

5th March, 1646.

Anno 1646. c. 72. [Scob. 114.]

The Number of the Trustees for the Sale of the Bishops' Lands lessened.

WHEREAS by virtue of an ordinance of the Lords and Commons in this present Parliament assembled, made the ninth day of October, *Anno Dom.* 1646, all counties-palatine, honours, manors, lordships, sites, circuits, precincts, castles, granges, messuages, mills, lands, tenements, meadows, pastures, parsonages, appropriate, tithes, oblations, obventions, pensions, portions of tithes, parsonages, vicarages, churches, chapels, advowsons, donatives, nominations, rights of patronages and presentations, parks, woods, rents, reversions, services, annuities, franchises, liberties, privileges, immunities, rights of actions and entry, interest, titles of entry, conditions, commons-courts, courts-leet, and courts-baron, and all other possessions and hereditaments whatsoever, with all and every of their appurtenances of what nature or quality soever they be, which then were, or at any time within ten years before the beginning of this present parliament were belonging to any archbishop or bishop within this kingdom of England or dominion of Wales, or which they or any of them had held and enjoyed in the right of their archbishoprics, or bishoprics, dignities, offices or places respectively, with all charters, deeds, books of account, rolls, and other writings whatsoever concerning the same belonging unto them, were vested and settled in the real and actual possession and seisin of Thomas Adams, alderman, then lord-mayor of the city of London, Sir George Clark, knight, John Langham, alderman, and John Jones, amongst others in the same ordinance named, and also by the said ordinance, and by other ordinances since made in pursuance thereof, or for the explaining or executing thereof, the said trustees are authorized and required to act and execute divers acts and things concerning the premises.

And whereas the said Thomas Adams, Sir George Clark, John Langham, and John Jones, have humbly desired to be discharged of the said trust, because they cannot constantly attend and execute the same, by reason of their other necessary occasions: the said Lords and Commons do hereby ordain, that the said Thomas Adams, Sir George Clark, John Langham, and John Jones, and every of them, shall be from henceforth no longer possessed, seised, or interested of, or in the premises, or any of them, or any part or parcel of them; but that the seisin, possession, and interest thereof, or thereunto, shall be from henceforth wholly and absolutely out of them, and every of them; and that they, and every of them shall be from henceforth wholly discharged of the said trusts to all intents and purposes whatsoever; and shall not from henceforth act or execute any power or authority, act or thing whatsoever by virtue of the first recited ordinance, or any other ordinance or ordinances aforesaid. And that all and every the premises, and every part and parcel thereof, shall from henceforth be vested and settled, adjudged and deemed to be, and shall be wholly and only in the real and actual possession and seisin of Sir John Wollaston, knight, and the other remaining trustees, whose names are expressed in the said first recited ordinance,

ordinance, and the survivors and survivor of them, their heirs and assigns, as fully and absolutely to all intents and purposes, as if the said Thomas Adams, Sir George Clark, John Langham, and John Jones, had not been at all named in the first recited ordinance, nor in any other of the said ordinances, and as if the said Sir John Wollaston, and the other remaining trustees only had been named therein. And the said Sir John Wollaston, and the other remaining trustees, or any five or more of them, shall from henceforth act and execute all the powers and authorities, acts and things whatsoever, which by the first recited ordinance, or any other of the aforesaid ordinances, are appointed to be acted and executed by all the trustees named in the first recited ordinance, or by any part of them, in as full and ample manner to all intents and purposes whatsoever, as all the trustees named in the first recited ordinance, or any part of them, might and ought to have done, any thing contained in the first recited ordinance, or in any of the aforesaid ordinances to the contrary in anywise notwithstanding.

And it is further hereby declared and ordained, that the said Sir John Wollaston, and the other remaining trustees, or any five or more of them, or such person or persons as they or any five or more of them under their hands and seals shall thereunto appoint and authorize, shall have full power and authority to let or set for one year or less, and so from year to year, or less, before the sale hereof respectively, any of the premises which are appointed to be sold by any of the said former ordinances now being, or which shall be at any time before the sale thereof respectively out of lease, unto such persons and in such manner, whereby the best profit and advantage thereof may be made as they shall think fit, the rents and profits thereof to be disposed in such manner as in the said former ordinances is declared, concerning the other rents, profits, and receipts therein mentioned and contained.

Provided always, that such of the said premises as are grantable by copy of court roll, according to the custom of any honour or manor, and which they have power to demise as is aforesaid, shall be demised by the copy of the court roll respectively, and not by any lease at the common law.

And the said Lords and Commons taking into their consideration the pains and good service of the said Sir John Wollaston, and the other remaining trustees, for their encouragement therein, do hereby ordain, that the said Sir John Wollaston and the other remaining trustees, (except the three treasurers and the comptroller, who have a salary already allowed to them,) shall have and receive the sum of two thousand pounds; that is to say, one thousand pounds thereof at the end of six months, to be accounted from the aforesaid ninth day of October, and the other one thousand pounds at the end of six months after: which said sum of two thousand pounds, the aforesaid treasurers, or any two of them, are hereby authorized and required to pay accordingly unto them, or to such person or persons for them, as they or the major part of them under their hand-writing shall appoint, out of such moneys as the said treasurers shall have received by the profits or sale of the premises. And that the said Sir John Wollaston, and the other remaining trustees, (except such as are before excepted,) or the major part of them, shall distribute and dispose of the said two thousand pounds among themselves by such proportions, and in such manner as they or the major part of them shall think fit. Lastly, the printing of this ordinance is referred to the trustees, or the major part of them.

5th March, 1646.

Anno 1647. c. 85. [Scob. 129.]

1647.

For the true Payment of Tithes and other Duties.

WHEREAS some doubts have been raised, whether ministers put into livings and sequestrations by ordinance of both houses of parliament, or committees thereunto authorized by them, be comprised within the ordinance of the 8th of November, 1644, intituled, "An Ordinance of the Lords and Commons assembled in Parliament for the true Payment of Tithes, and other such

8th Nov. 1644.

1647.

The former ordinance shall extend to all ministers put into any living by authority of parliament.

such Duties, according to the Laws and Customs of the Realm," so as to recover their tithes and other duties by virtue thereof, and in what manner justices of peace ought to proceed upon the same; the Lords and Commons assembled in parliament for prevention of all such doubts and scruples, do declare, that every minister put, or which shall be put, into any parsonage, rectory, vicarage, or ecclesiastical living, by way of sequestration, or otherwise, by both or either the houses of parliament, or by any committee, or other person or persons by authority of any ordinance or order of parliament, shall and may sue for the recovery of his tithes, rates for tithes, rents, and other duties by virtue of the said ordinance, in as full and ample manner to all intents and purposes, as any other minister or other person whatsoever. And that the justices of peace mentioned in the said ordinance shall, upon complaint to them made by any such minister as aforesaid, or other person within the said ordinance, immediately without delay issue out their warrants to the constables, petty constables, or other officers, to summon such person or persons who already have, or hereafter shall refuse to set out, or pay, or shall subtract their tithes, rates for tithes, rents, or other duties, to appear before them at their next monthly meeting, or sooner, and use all possible expedition in the hearing and determining of such complaints; and shall likewise have power to award treble damages to the parties complaining, and shall award the same accordingly in all such cases where the statute allows and gives the same to any minister or other person whatsoever.

And in case the sum or sums of money so judged and awarded, shall not be paid within the time in the said ordinance mentioned, then the said justices shall, upon complaint to them made, send forth their warrants to the constables, petty constables, or such other fit persons as shall be by the parties named, to whom any such sum or sums upon such judgment shall be due, to distrain all and every or any the goods and chattels of any person or persons so refusing, and to sell and dispose of the said goods and chattels according to the said ordinance; and to impose such fines and penalties, not exceeding the sum of forty shillings, upon the constables, petty constables, and other officers who shall wilfully refuse or be negligent in executing their warrants, as they in their discretion shall think meet.

And because many appeals are brought into the chancery upon the former ordinance for tithes, rather for vexation and delay than otherwise, be it therefore ordained, that no appeal shall be received or admitted thereupon, until the party appealing shall lay down in money, either with the said justices of peace, or in the court of chancery, the full value of the tithes adjudged before the said justices, by way of security, to prosecute his appeal with effect, and to render double costs and damages to the party injured or delayed by the appeal, in case no relief be given upon the appeal to the prosecutor.

Provided, that this ordinance shall continue and be in force from the four-and-twentieth day of July, 1647, until the first day of November, which shall be in the year 1648.

9th August, 1647.

Anno 1647. c. 88. [Scob. 131.]

Ministers placed in Livings by Authority of Parliament, continued therein.

WHEREAS divers ministers in the several counties of this kingdom, for notorious scandals and delinquency, have been put out of their livings by authority of parliament, and godly, learned, and orthodox ministers placed in their rooms: and whereas the said scandalous and delinquent ministers by force or other ways have entered upon the churches, and gained the possession of the parsonage houses, tithes, and profits thereunto belonging, and have obstructed the payment of the tithes and other profits due by the parishioners unto the ministers placed in the said churches by authority aforesaid.

The Lords and Commons assembled in parliament do therefore order and ordain, and be it ordained by the said Lords and Commons, that all sheriffs, mayors, bailiffs, justices of the peace, deputy lieutenants, and committees of parliament, in the several counties, cities, and places within this kingdom, do forthwith

forthwith apprehend, or cause to be apprehended all such ministers as by authority of parliament have been put out of any church or chapel within this kingdom, or any other person or persons who have entered upon any such church or chapel, or gained the possession of such parsonage houses, tithes, and profits thereunto belonging, or have obstructed the payment of the tithes and other profits due by the parishioners to the said ministers there placed by authority of parliament or sequestrators appointed, wherein no ministers are settled to receive the same, and all such persons as have been aiders, abettors, or assisters in the premises, and commit them to prison, there to remain until such satisfaction be made unto the several ministers placed by the said authority of parliament, for his or their damages sustained, as to the said sheriffs, mayors, bailiffs, justices of peace, deputy lieutenants, or committees of parliament, or any two of them, shall appear to be just, upon hearing and proof made upon the oath of two sufficient witnesses, (which they or any two of them are hereby authorized to administer,) who are likewise required to restore, settle, and quiet the possession of such ministers as have been placed by the said authority of parliament; and they or any two of them have hereby power to raise trained bands, or any other forces within the said several counties, cities, and places, to put this ordinance in execution: and the said sheriffs, mayors, bailiffs, justices of the peace, deputy lieutenants, and committees of parliament respectively, are hereby required to take effectual course according to the several orders and ordinances of parliament in that behalf made, that all men do pay their tithes or profits due unto the said respective ministers. And it is hereby further ordered and ordained, that the committee appointed for plundered ministers, have power to see this ordinance put in execution. And it is further ordained, that the committee of complaints do give the like remedy to all such ministers put in by the said authority of parliament, and sequestrators of the profits, against whom any action shall be brought by any such delinquent, or scandalous ministers, or any other claiming by or under them, for their livings, tithes, and profits, as they are authorized unto by any order or ordinance in other cases.

It is lastly ordered and ordained, that if any such scandalous or delinquent minister put out as aforesaid, their aiders or abettors, shall at any time hereafter disturb, molest, or hinder such minister as is put into such church or chapel as aforesaid, in the exercising of the office of his ministry, upon proof thereof made upon the oath of two witnesses, before the said sheriffs, mayors, bailiffs, justices of peace, deputy lieutenants, or committees of parliament, or any two of them, it shall and may be lawful to and for the said sheriffs, mayors, bailiffs, justices of peace, deputy-lieutenants, or committees of parliament, or any two of them, to commit such offender or offenders to prison for one month, so often as he or they shall so offend.

23d August, 1647.

1647.
Sequestered ministers interrupting such as are placed in their livings shall be apprehended.

Imprisonment.

Tithes to be paid to them.

Committee for plundered ministers and for complaints.

Anno 1647, c. 93. [Scob. 132.]

Concerning sequestered Books, Evidences, Records, and Writings.

BE it ordained by the Lords and Commons assembled in Parliament, that all the books, evidences, records, and writings, sequestered within the cities of London or Westminster, that are come to the hands of the committee of lords and commons, appointed by ordinance of parliament, of the 18th of Nov. 1643, or of any of them, or of any person or persons, by their or any of their direction or appointment; or which should by the said ordinance be delivered to the said committee or any of them, to be by the said committee preserved for such uses as should be appointed by the houses of parliament, be forthwith delivered unto, and placed in the custody, care, and charge of Henry Elsyng, esquire, register, appointed for the sale of bishops lands; and that the said register be hereby authorized by himself or his deputies to deliver out any of the said books, evidences, records, and writings, according as from time to time he or they shall receive order from both or either of the houses of parliament, or from the committee of lords and commons for sequestrations, or from the commissioners of lords and commons, sitting at Goldsmiths-Hall respectively.

22d September, 1647.

Anno

1647.

Anno 1647. c. 94. [Scob. 133.]

Further Encouragement to Purchasers of Bishops Land.

THE Lords and Commons assembled in Parliament, for the better security and encouragement of all and every such person and persons, bodies politic and corporate, as already have, or hereafter shall become purchaser or purchasers from the trustees (appointed by ordinance of parliament for the sale of bishops lands) of any manors, lands, tenements, franchises, annuities, fees, liberties, royalties, and hereditaments whatsoever, lately belonging to any archbishop, or bishop, within the realm of England, or dominion of Wales; do order and ordain, and be it hereby ordered and ordained by the authority aforesaid, that it shall and may be lawful for all and every such purchaser or purchasers to have, and pass one or more letters-patent under the great seal of England, of all or any part of the manors, lands, tenements, franchises, annuities, fees, liberties, royalties, and hereditaments, with their appurtenances, so by him or them purchased from the said trustees as aforesaid, to be holden of the King as of his manor of East Greenwich, by fealty only, and not in capite nor knight's service.

Purchasers may have the King's letters-patent.

To be holden as of East Greenwich.

Bodies politic may purchase any bishops lands without license in mortmain.

And be it further ordained and declared by the authority aforesaid, that all and every bodies and body politic and corporate within the kingdom of England, and dominion of Wales, shall have power and capacity, and are hereby enabled to receive, take, and purchase to themselves, and their successors for ever, any of the said manors, lands, tenements, franchises, annuities, fees, liberties, royalties, and hereditaments whatsoever, belonging to the said archbishops and bishops, without any license or licenses of alienation in mortmain first sued forth, or obtained for that purpose, any law, statute, ordinance, or charter to the contrary hereof in any wise notwithstanding.

A bill containing the King's grant to the purchaser, is to be passed under the great seal of England.

And be it further ordered and ordained by the authority aforesaid, that the attorney-general or solicitor-general for the time being, upon shewing forth of any such deed or purchase, under the hands and seals of the said trustees or any five or more of them, is hereby authorized and required to prepare a bill in usual form, containing the King's grant to such purchaser and purchasers, their heirs, and successors of the lands and premises, so purchased by him or them, according to the tenor and effect of such deed of purchase; which bill so prepared, the lord chancellor, lord keeper, or commissioners for the great seal of England, for the time being, are hereby authorized and required to pass under the said great seal in usual form accordingly. And it is further ordained, that no fine or fee be demanded, or paid into the banaper for or in the King's name, or to his use, upon the passing of any such grant, or of any other grant where lands have been or shall be sold by ordinance of parliament, to any person or persons in satisfaction of the debts of the kingdom, but all and every such fines, except as afore excepted, save only a fourth part of what hath been formerly demanded and paid, are hereby pardoned and discharged. And it is further ordained, that the register for the sale of bishops lands for the time being, the surveyors of the said lands, the stewards of all or any of the said courts belonging to any of the said bishops, and all other officers and persons who have in their hands, or in the hands of others for them, any counterparts of leases, ancient surveys, copies of court rolls, rentals, terrars, or other deeds, records, or writings, which concern only any of the manors or premises so already purchased, or hereafter to be purchased as aforesaid, are hereby authorized and required upon sight of any such deed of purchase from the said trustees as aforesaid, to deliver forthwith all the counterparts of leases, and all other the records and writings before-mentioned, which concern only the manors, lands, and premises comprised within any such deed of purchase unto the respective purchaser and no other: provided, that no person which maketh title to any of the said lands or premises, (other than the archbishops and bishops themselves,) be compelled by this ordinance to deliver out of his hands any such lease or writings as aforesaid, concerning those lands which he maketh his claim.

No person shall be compelled to deliver his writings.

And

And it is further ordained and declared by the authority aforesaid, that all and every person and persons, bodies politic and corporate, who have already contracted for, or hereafter shall contract for any of the said manors, lands and premises, with the contractors appointed for the sale of bishops lands, shall prosecute and procure their respective conveyances from the trustees appointed to pass such conveyances within eight weeks after the passing of this ordinance; that is to say, all such persons as have already contracted shall prosecute and procure their respective conveyances from the trustees within eight weeks next after the date of this ordinance; and such persons as shall hereafter contract within eight weeks next after the date of their respective contracts, unless they shew such good cause for such their delay as the said contractors shall under their hands approve of and allow; and in default hereof, all and every such person and persons, bodies politic and corporate, so contracting and making default as aforesaid, shall forfeit a third-part of the value of the monies agreed to be paid upon their respective contracts, to be defalked out of the monies any ways due to them from the commonwealth, or to be levied upon their lands and goods in such manner as both houses of parliament shall hereafter ordain and appoint. And it is lastly ordained, that this ordinance be forthwith printed and published, and sent down to the sheriffs of all the counties of England and dominion of Wales, by the care of the said trustees, which said sheriffs are hereby required to publish the same in all their next respective county courts, after the receipt hereof as aforesaid.

23d of September, 1647.

Anno 1647. c. 109. [Scob. 132.]

Further Directions touching Purchasers of Bishops Lands.

TO prevent all further delays and neglects in paying in monies, and perfecting conveyances by such who have contracted for bishops lands; it is ordered and ordained by the lords and commons assembled in parliament, that all and every such person or persons, who have contracted, or shall hereafter contract for any lands, possessions, or hereditaments of the late archbishops and bishops; and according to an ordinance of the 23d of September, 1647, have obtained or shall obtain from any five or more of the contractors for sale of the said lands, any certificate of allowance of any reasonable cause shewn, or to be shewn by him or them, for his or their not prosecuting and perfecting their respective conveyances upon their contracts, and shall neglect within the time limited by the said contractors certificate to procure his or their respective conveyances from the trustees for sale of the said lands, shall forfeit the third-part of the whole monies payable upon his or their respective contracts; unless he or they shall, within that time, upon good cause shewn, procure from five or more of the said contractors a new certificate for further time to perfect his or their conveyances, and likewise pay in the moiety of the purchase-money, (or so much as the same shall be estimated by the register, in case it cannot be ascertained,) at such time as the said contractors certificate shall appoint; and likewise agree to pay the second moiety within six months after such payment of the first.

Provided, that if the aforementioned estimate of the moiety of the purchase-money paid in as aforesaid, shall, upon casting up of the rates, appear to be more or less than the true moiety of the said purchase-money, then there shall be such abatement or addition out of, or unto the second payment, as shall reduce and bring it to the just moiety.

And it is ordered and ordained, that the forfeitures of all such persons who have any monies secured unto them by any of the ordinances for the sale of bishops lands, shall be wholly defalked by the treasurers out of such monies, if sufficient to satisfy the same; if not, then the said treasurers are to detain so much as is due unto them upon the said security, and the residue of the said monies so forfeited to be raised as is directed by this ordinance: and such person or persons who have no monies on the said security, and notwithstanding have contracted or shall contract for the said premises, or any part thereof, but

1647.

but have not perfected his or their conveyances according to the said ordinance of parliament, his or their forfeiture shall likewise be levied as is directed by this present ordinance.

And it is further ordered and ordained, that such person or persons as shall incur or make any forfeiture by reason of the aforesaid, or this present ordinance, shall pay in to the said treasurers his or their monies so forfeited, or so much of it as is unsatisfied, within ten days next after such forfeiture made: and in case the same be not paid in to the said treasurers within the time before limited, the said treasurers, or any two of them, are hereby required under their hands to certify such neglects of non-payment unto five or more of the said contractors of the said lands within three days next after such default made; and after such certificate made, the said contractors, any five or more of them, are hereby required and enjoined to make certificates under five or more of their hands, of the sum or sums of money forfeited as aforesaid, unto the respective committees or commissioners for sequestration in the several and respective counties and places within the realm of England, and dominion of Wales, where such person or persons forfeited as aforesaid, have or hath any real or personal estate.

And it is further ordered, ordained, and declared by the authority aforesaid, that the said respective committees or commissioners for sequestration, shall, and are hereby authorized and required, upon receipt of such certificate from the said contractors, to seize, sequester, and secure the real and personal estate of such person or persons so forfeiting as aforesaid, and the same to detain in their custody without sale or disposal thereof for the space of ten days.

Provided, that if the person or persons so sequestered, do pay, or cause to be paid in to the said treasurers, his or their forfeitures within the said ten days, that then upon certificate from the said treasurers, or any two of them to the respective committees or commissioners of the payment thereof, the said committees or commissioners for sequestrations, are to discharge the sequestration of the said real and personal estate of such person or persons.

And it is further ordained, that in case such person or persons forfeiting as aforesaid, do not satisfy and pay in his or their forfeitures within the said ten days, that then the said committees or commissioners are hereby required and authorized to levy and raise such sum or sums certified unto them as aforesaid, by sale of the goods, and receipts of the rents, issues, and profits of the lands of such person or persons, and after the sum certified as aforesaid is raised, the said lands, and residue of the said goods unsold, are to be discharged of the sequestration.

And it is further ordained, that all the said forfeitures shall be paid in by the respective committees or commissioners to the said treasurers, to be disposed of for such purposes as are appointed by the ordinance of the 16th of November, 1646, as the trustees, or any five or more of them, shall by their warrant under their hands direct, which they are hereby authorized to do; and such their warrant, together with the parties acquittance to whom the same shall be paid, according to such warrant, shall be a sufficient discharge to the treasurers in that behalf.

And it is further ordained, that after such forfeiture incurred, it may and shall be lawful for any five or more of the contractors, to contract for, and sell all or any of the said lands so contracted for and not prosecuted, to any other person or persons, notwithstanding the former contract, as if it never had been made (any former ordinance to the contrary notwithstanding).

And it is lastly ordained, that the trustees for the said lands do forthwith send this ordinance to the respective sheriffs of the several counties, cities, and boroughs in the kingdom of England, and dominion of Wales, who are hereby required to publish this present ordinance in the chief market towns of the said county, the next market day after the receipt thereof; and the day of the publication thereof to certify to the said trustees.

23d March, 1647.

Anno 1648. c. 110. [Scob. 146.]

1648.

The Ordinances for Tithes shall extend to the City of London and Liberties thereof.

WHEREAS, by an ordinance of Parliament of the eighth of November, *Anno Dom.* 1644, intituled "An Ordinance of the Lords and Commons assembled in Parliament, for the true Payment of Tithes and other such Duties, according to the Laws and Customs of the Realm," there is a proviso, That the said ordinance, or any thing therein contained, shall not extend to any tithes, offerings, yearly payments, or other ecclesiastical duties, due or to be due for any houses, buildings, or other hereditaments within the city of London, or the liberties thereof, which be otherwise provided for by act of parliament: And whereas some doubt and scruple hath been made, whether the Lord Mayor of the said city of London be sufficiently authorized to relieve such ministers within the said city or the liberties thereof, as have been put into any benefice or ecclesiastical living by way of sequestration by both or either houses of parliament, or by the committee for plundered ministers, or any other committee of parliament; Be it therefore ordered and ordained by the Lords and Commons in this present parliament assembled, that the said proviso in the before-mentioned ordinance of the eighth of November, 1644, be hereby repealed, and wholly made null and void; And that the said ordinance of the eighth of November, 1644, and the ordinance of the ninth of August, 1647, intituled, "An Additional Ordinance of the Lords and Commons assembled in Parliament, for the true Payment of Tithes and other Duties;" and the ordinance of the three-and-twentieth of August, 1647, intituled "An Ordinance for keeping in godly Ministers, placed in livings by Authority of Parliament;" and all other ordinances of Parliament concerning the payment of tithes, rates for tithes, rents, or other duties, do extend unto the said city of London, and the liberties thereof, and be put in execution by the Lord Mayor of the said city for the time being, or by any two justices of peace within the said city or liberties thereof, who are hereby authorized and required respectively, to require and command the aid of all constables and other officers, that shall be by the said Lord Mayor or justices of peace as aforesaid appointed for their assistance in the due execution of this ordinance, as well within their several parishes or precincts, as without, as well in cases of sequestration as otherwise, to all intents and purposes, and in the like manner, as in and by the said ordinances is ordained, limited, and appointed to be executed and done in any other place or places within the kingdom of England, by the respective justices of peace, and other officers in the said ordinances mentioned.

Repeal of a proviso in an ordinance of 8th Nov. 1644.

All ordinances concerning tithes shall extend to the city of London and liberties.

Provided, that this ordinance, or any thing therein contained, shall not be construed to extend to the payment of any other kind of tithes, payments, rents, or duties, than such as have been paid at any time since the beginning of this parliament, or two years before.

This ordinance not to extend to any other kind of tithes or duties, than such as have been

4th April, 1648.
paid since the beginning of this parliament, or two years before.

Anno 1648. c. 121. [Scob. 180.]

A Continuance of, and some Additions to, the Ordinance of the 9th of August, 1647, for Payment of Tithes and other Duties.

THE Lords and Commons assembled in Parliament, do order, ordain, and declare, that the ordinance of parliament of the 9th of August, *Anno Dom.* 1647, intituled, "An Additional Ordinance of the Lords and Commons assembled in Parliament, for the true Payment of Tithes, and other Duties," shall continue, remain, and be, and hereby is continued, to remain, and be in full force and strength, from the last day of October, *Anno Dom.* 1648, until the 1st day of November, *Anno Dom.* 1650, any proviso of limitation, or restraint for ceasing, or determination thereof, therein contained, or to the contrary in anywise notwithstanding.

Provided

1648.

Provided always, that upon all appeals to be brought into the chancery, the party appealing shall lay down in money, either with the justices of peace, by whom any order shall be made, according to the purport of the said ordinance, or in the court of chancery, the full value of the tithes adjudged before the said justices, together with the treble damages and costs; the which costs so to be deposited, shall not exceed ten pounds, or in default thereof, no appeals shall be received or admitted.

And it is likewise ordained, that the penalty of forty shillings upon constables, petty constables, and other officers limited and appointed in and by the said ordinance, for neglecting to do their duties, shall be levied by way of distress and sale of the goods of such persons so neglecting or refusing, by warrant from the said justices of peace, and by such persons as shall by them be thereunto authorized, the same to be employed to the use of the poor of that parish where such constable, petty constable or other officer doth inhabit.

27th October, 1648.

Anno 1648. c. 122. [Scob. 181.]

A Committee appointed for removing Obstructions in the Sale of Bishops' Lands.

The names of
the committee.

Their powers.

THE Lords and Commons assembled in Parliament, taking into their consideration the many obstructions that have and do daily happen in and about the sale of the manors, lands, tenements and hereditaments, of the late archbishops and bishops: and how necessary it is to free the kingdom from so great a debt with which it stands charged until the said lands be sold: do hereby declare and ordain, that Algernon Earl of Northumberland, Henry Earl of Kent, Philip Earl of Pembroke and Montgomery, Charles Earl of Nottingham, William Earl of Salisbury, Basil Earl of Denbigh, Edward Earl of Manchester, Edmund Earl of Mulgrave, William Lord Gray of Wark, Edward Lord Mountague, Edward Lord Howard of Escrick, Mr. Prynne, Sir William Lewis, Mr. John Ash, Sir Dudley North, Mr. Trenchard, Mr. Drake, Colonel Purefoy, Colonel Copley, Mr. Aunesley, Mr. Wheeler, Mr. Gewen, Mr. Miles Corbet, Mr. Reynolds, Mr. Edward Ash, Mr. Scot, Mr. Blakiston, Colonel White, Sir Robert Harley, Mr. Francis Allen, Colonel Harvey, Colonel Venn, and Sir Harbottle Grimston, or any five or more of them, shall be, and are hereby constituted a committee of parliament for the regulating and removing of obstructions which shall appear unto them, or any five or more of them, or be presented unto them as aforesaid, by the contractors, or any five or more of them, or by the trustees, or any five or more of them, or by the treasurers, or any two of them, or by the comptroller of the said premises, in the clearing the state of the said debt, and in the sale and speedy perfecting of the conveyances of the said premises, and for the clearing of any doubts which have or shall arise upon any clause or word in any of the ordinances for the sale or conveying any of the said premises to any person or persons as they shall conceive meet, so as the said premises in possession, nor any part thereof be sold under the rates limited by former ordinances of parliament, nor reversions upon leases for lives or years under the rates expressed in the ordinance of parliament dated the seventeenth day of March, one thousand six hundred forty and seven. And if it shall appear upon the survey, or by proof upon oath, which the said committee or any five or more of them, (whereof one to be a peer,) are hereby authorized to administer, that any tenant or tenants or others, by the custom of any manor or place, have or hath any custom, customs or privilege, which in the purchase of the premises ought to be considered and allowance made unto the purchaser in his purchase for the same, the said committee as aforesaid are hereby authorized to certify the custom proved as aforesaid to the register, who is thereupon to make out a particular, upon which the contractors shall and may proceed to sell or make allowance unto the purchaser, and the trustees to convey, as if the same had been expressed in the survey. And where any complaint shall be made by any purchaser or purchasers or others of any irregularity or exactions of fees by any officer or clerk now employed, or hereafter to be

be employed in, about, or concerning the premises; the said committee, as aforesaid, are hereby authorized to examine, allow, appoint, remove, and regulate such fees, charges, and officers not already limited and appointed by ordinance of parliament; and also appoint such officers or others, employed or to be employed about or concerning the same, as they shall think fit and necessary. And after allowance of such officer's fee or charges certified by the said committee to the trustees or any five or more of them, they shall and may make out a warrant or warrants from time to time to the treasurers for the paying of the same, which the treasurers shall, and are hereby authorized to pay accordingly, and the parties receipt to whom the monies are so assigned, shall be to them a sufficient discharge:

Provided, that this shall not take away any power the trustees, contractors, or treasurers, by ordinance of parliament have in the nomination of their officers; and also to ascertain, and allow out of the premises or profits thereof to any officers or others, who have fees, rents, annuities, or other charges, as shall appear to be justly due by any lawful grant from any of the archbishops or bishops; and if any doubt or difference shall arise among the trustees, contractors, treasurers, comptroller, or any of them, or any others employed in or about the said premises, or any of them, or any part thereof, or any thing concerning the same; that the said committee, or any five or more of them, upon information thereof by them or any of them, shall call before them such person or persons, and shall hear, examine, settle, and determine the same, and such order, direction, and determination, as they shall make, shall be the rule by which such person or persons shall proceed therein; and they are hereby authorized and enjoined to proceed accordingly; and if any person or persons whatsoever, have in his or their custody, or hereafter shall have the possession of any writing, evidences, charters, counterparts of leases, rent rolls, records, ledger books, or any other thing or things of or belonging to the said premises, or any part thereof, which by force or virtue of any ordinance or ordinances of parliament have been vested, settled, or ought to be, or have been in the possession of the foresaid trustees, register, his or their assigns, or any purchaser or purchasers thereof, their heirs or assigns, or belonging unto him or them, or have since the first of December, one thousand six hundred forty and six, or hereafter shall waste, spoil, receive, take, or detain any of the castles, houses, buildings, woods, underwoods, rents, issues, and profits of the said premises, and shall refuse to yield obedience to all or any ordinance of parliament touching the premises, and to such further orders, directions and determinations of the said committee, or any five or more of them, shall make of and concerning the same; that then the said committee, as aforesaid, are hereby authorized to summon before them, or any five or more of them, such person or persons, and if he or they shall refuse to appear upon summons, then to send for him or them in safe custody, and to hear and examine him or them, and likewise to send for papers, writings, evidences, records, and witnesses touching the same, and to examine witnesses upon oath, which the said committee, or any five or more of them, are hereby authorized to administer, and thereupon to determine the same, and to assess damages upon the person or persons so offending, so as the said damages do not exceed such damage as is proved upon oath as aforesaid, the purchaser or purchasers, or the estate have or hath sustained by such entry, detainer, waste or spoil, and the party or parties so offending, are hereby required to pay such damages as shall be given the state, unto the said treasurers, and to the purchaser or purchasers of the said premises, such damages as shall be given him or them respectively, within fourteen days after judgment given as aforesaid, or else to give sufficient security to the said treasurers, and to such purchaser or purchasers respectively to pay the damages so assessed within three months; the which sum or sums of money paid in to the said treasurers, are to be issued out and disposed of by the said treasurers for such uses as are appointed by former ordinances of parliament, for the sale of the lands of the late archbishops and bishops, and according to such warrant or warrants as they shall from time to time receive from the said trustees, any five or more of them; and that receipt of such person or persons to whose use the

1648.

the said monies are appointed, together with the warrant of the said trustees, shall be a sufficient discharge unto the said treasurers for the monies so paid; and if the said person or persons so offending, shall notwithstanding refuse to yield obedience unto the said ordinances of parliament, or such orders and directions as the said committee (as aforesaid) shall make and set down concerning the premises or any part of them, that then the said committee or any five or more of them are hereby authorized to commit such person or persons to safe custody till he or they yield obedience thereunto.

And it is further ordained, that if any person or persons have since the first day of December, one thousand six hundred forty and one, possessed him or themselves, or hereafter shall possess him or themselves of any the castles, houses, or buildings, or other the premises of the said late archbishops and bishops, he or they having no lease or grant thereof, from such archbishops or bishops made before the first day of December, one thousand six hundred forty and one, and shall, contrary to the order and determination of the said committee as aforesaid, refuse to yield up, or by force keep the possession of any of the said premises against the said trustees, or the purchaser, or purchasers of the same; that then the said committee as aforesaid, are hereby authorized to issue out a warrant or warrants unto the sheriff or sheriffs of the respective place or county where such detainer is used, requiring him or them forthwith to repair to the place, and to clear the possession, and such sheriff or sheriffs are hereby authorized and required to do the same, and to raise the *posse comitat.* if he or they shall find resistance, and by force of arms to suppress the same, and also to break open doors and gates for the clearing of the possession of the said premises, and the same so cleared to deliver up unto the said trustees, or such person as they or any five or more of them shall authorize to receive the same, or to the purchaser or purchasers or such person or persons as he or they shall authorize to receive the same; and the said sheriff or sheriffs are further authorized to commit to the next common prison for one month, such person or persons as he or they shall find to resist him or them in the execution of such warrant or warrants as he or they shall receive from the said committee as aforesaid, and such warrant or warrants as he or they shall receive as aforesaid, shall be a good and sufficient discharge unto him or them for so doing.

And it is further ordained, that where any certificate or survey hath been or shall be made and returned to the trustees or register, that any tenant hath neglected or refused to shew his evidences by which he holds his estate, nor made his claim nor his estate to appear by sufficient witnesses within the time limited by the ordinance of parliament, and according to the directions of the said ordinance, by reason of which his estate is forfeited and the premises sold as in possession, the said committee are hereby authorized upon the appeal of such person or persons unto them or any five or more of them, to hear and determine such case or cases, and to send for papers, writings, and witnesses touching the same, and the witnesses, if they see cause, to examine upon oath, which they are hereby authorized to administer: and if it shall appear to the said committee that such default was not through any wilful neglect or contempt of the power and authority of the parliament, but upon other good and sufficient causes shewn to and to be allowed by the said committee, they shall and may and are hereby authorized thereupon to discharge the estate of such person of and from the said forfeiture, which they shall certify to the said contractors or any five or more of them, who are hereby authorized and required, out of the purchase monies unpaid, to reprise so much as the purchase of such part of the premises was estimated at in sale thereof, which they shall certify unto the treasurers, who are hereby authorized and required to allow the same unto such purchaser or purchasers out of his or their monies which shall be unpaid at the time of the receipt of such certificate, which shall be a sufficient discharge to the said treasurers;

Provided, that such tenant or tenants make his or their appeal to the said committee before the payment of the second moiety for such purchase.

And it is further ordained, that such order or discharge made as aforesaid, shall be good and effectual to such tenant or tenants to have, hold and enjoy the

the particular estate and interest he claimed and made appear, as aforesaid, he ought to have and enjoy the said premises, notwithstanding the same were forfeited and sold as in possession.

And it is further ordained, That if any such person or persons who intend to be the purchaser or purchasers of any of the hereditaments and possessions of the late archbishops and bishops, where there hath been or shall be any such neglect or refusal of the tenants as aforesaid, certified upon the survey of the said premises or forfeiture incurred, do, or shall procure from the contractors a certificate unto the said committee, or the names of such tenant or tenants who have refused or neglected, and forfeited, or shall neglect, refuse or forfeit as aforesaid, that then the said committee as aforesaid, are hereby authorized to send for such tenant or tenants, as likewise for their leases or copies, and other writings concerning their estate in the premises, which if he or they shall refuse to produce, or make his or their estate appear by proof upon oath, which the committee is hereby authorized to administer, that then the said committee may commit such person and persons to safe custody, there to remain until he or they yield obedience to this and other ordinances of parliament, and such orders as the said committee shall make touching the premises: And the said contractors may notwithstanding sell such premises as in possession, according to a former ordinance of parliament. And in case of obedience and conformity to the ordinances of parliament, and such orders as the said committee shall make touching the premises, the said committee are hereby authorized to discharge the estate of such person or persons of and from the said forfeiture, and the same together with the particular interest is made appear unto them to certify as well to the trustees as register; and the register shall make his particular accordingly; And the said contractors are hereby authorized to contract for and sell, and trustees to convey the same, as if it had been expressed in the survey.

And it is further ordained, that where in any survey made or to be made of any of the manors, lands, tenements, and hereditaments of the said late archbishops and bishops, there shall be any words wanting, without which the said committee or any five or more of them, or the said contractors, or any six or more of them, shall conceive that the said premises, or any part thereof comprised in any such survey, or any of the courts, franchises, liberties, royalties, privileges, or appurtenances to them or any of them belonging, cannot be conveyed to the purchaser or purchasers thereof, so fully as ought to be: To the intent the purchaser may have in his or their conveyance, words sufficient to pass so much of the said premises as he or they do or shall contract for; the register, in every particular by him made upon every such survey, shall insert, and hereby is authorized to insert such words as the committee as aforesaid, or the said contractors, or any six or more of them shall think fit, and direct, therein to be inserted, notwithstanding the same be not expressed in the survey, whereupon such particular shall be made. And the said contractors shall and may proceed, and are hereby authorized and enjoined to contract for, and pass conveyances of the said premises, or any part thereof according to such particular so amended.

Provided, that there shall be no reprise by reason of the addition of any word or clause as aforesaid, unless there be a value put upon the thing or things in the particular, upon which the contract is made.

And it is further ordained, That if any purchaser or purchasers, or others, shall make it appear unto the said committee, any five or more of them, by proof upon oath, which the said committee as aforesaid, are hereby authorized to administer, and likewise to send for parties, writings and witnesses, touching the premises, that the premises contracted for or conveyed, are subject and liable unto any estate, charge, or incumbrance not mentioned in the survey of the said premises, or that the premises were not the manors, lands, tenements and hereditaments of the said archbishops or bishops; That then the said committee, or any five or more of them, are hereby authorized to hear and examine the same as aforesaid, and thereupon to determine the same, and to certify unto the said contractors their resolution and determination of and concerning the premises: And the said

1648.

said contractors are hereby authorized to allow unto such purchaser or purchasers, by way of reprise out of his or their monies unpaid, so much as the said estate, charge, or incumbrance, proved as aforesaid, shall be valued at, and the same to certify to the trustees, who shall issue out warrant or warrants to the treasurers, to defalk and allow the same unto such purchaser or purchasers: And where the said contractor shall be certified as aforesaid, that the premises contracted for, or conveyed, were not the premises of the said late archbishops or bishops, they shall and may, and are hereby authorized to discharge such purchaser or purchasers of his or their contract: And in case where any purchaser hath perfected his conveyance, if the said committee as aforesaid do or shall certify the said trustees, or any five or more of them, that the premises are not the manors, lands, tenements and hereditaments, of the said late archbishops or bishops; that then the said trustees, as aforesaid, shall issue out their warrant to the treasurers to repay such person or persons his or their monies forthwith out of such monies as are in the treasury, or out of the next monies which shall come into the treasury: And the said warrant, together with the receipt of the party, shall be a good and sufficient discharge to the said treasurers.

And it is further ordained, that if any doubt shall be made or arise upon any word or clause in this present ordinance, or any other ordinance of parliament, touching and concerning the premises, by the said trustees, contractors, treasurers, and other officers, employed about or concerning the said premises; the said trustees, contractors, treasurers, and other officers employed as aforesaid, are hereby authorized and enjoined to proceed therein according to the determination and direction of the said committee, any five or more of them, any former order or ordinance of parliament to the contrary notwithstanding: And whatsoever the said committee, trustees, treasurers, and other officers, or any of them, shall do in pursuance of this present ordinance, they shall be saved harmless and indemnified by authority of parliament.

21st November, 1648.

Anno 1648. c. 124. [Scob. 185.]

For Removal of Obstructions in the Sale of Bishops' Lands.

THE Lords and Commons assembled in Parliament, for the more speedy sale of the manors, lands, and possessions of the late archbishops and bishops, and removal of several obstructions which hinder the sale thereof, do ordain and declare, and be it ordained and declared by the authority aforesaid, that the contractors appointed by ordinance of parliament of the sixteenth of November, 1646, to contract for, and sell the said lands and possessions, or any five or more of them, are hereby appointed, authorized and empowered to peruse all surveys returned and to be returned of the said lands and possessions, and to amend, upon due proof made before them upon oath, all mistakes in misnomer of any person or persons, places or thing, and likewise without oath to amend all other misprisions in miscasting the total of any particular sums of money or numbers of acres, or such other like mistakes, and also to make such amendments in surveys returned, and to insert such words of course in particulars or conveyances, as they shall think fit and necessary to pass such estates as they shall contract for to the purchasers, according to the true intent and meaning of the contracts which they shall make: and to order and direct the respective surveyors for review or amendment of any surveys returned, as they shall see cause, and also to add by way of supplement certificates of any estates or interests, which shall be made appear to them in manner and form hereafter expressed; to which end and purpose, Be it further ordained by the said Lords and Commons, that all and every person and persons, who claim or pretend any interest or estate in any of the said lands and possessions, or any annuity, rent-charge or other charge, issuing out of the same, and have not made their claims, produced their evidences, or otherwise made their estates and interests appear to the respective surveyors of the lands and tenements out of which they claim such estates, before the return of their respective surveys (notice

Contractors
power to amend
mistakes in sur-
veys.

And miscasting
the total of any
particular, &c.

To order a re-
view or amend-
ment of surveys,
&c.

Time given for
making claims.

1648.

(notice and warning being given by the said surveyors, according to the instructions of both houses of parliament in that behalf) shall and are hereby required within forty days next after the publication of this ordinance, in such manner as is hereafter expressed, or return of their respective surveys, to make their claims or produce and shew forth their evidences, or otherwise make their estates and interests appear to the said contractors upon oath of one or more credible witnesses, and also all other persons claiming any such interest, estate, annuity, or rent-charge, who shall not make their claims, produce their evidences, or otherwise make their said interests and estates appear to the said surveyors of the lands and tenements, out of which they claim such estates, annuities, or rents-charge, before the return of their respective certificates, shall and are hereby required within forty days next after the publication of this ordinance as aforesaid, or return of the said respective certificates, make their claims, or produce and shew forth their evidences, or otherwise make their estates and interests appear to the said contractors by oath as aforesaid, which oath and oaths the said contractors, or any five of them, are hereby authorized from time to time to administer. And in case default be made by any such person or persons, in making their said claims, or estates, or interests, to appear in manner and form aforesaid, that then all and every such person and persons, so failing, shall forfeit and lose their respective interest, estates, annuities, and rents-charge, and the lands and tenements out of which they shall claim the same shall and may be sold as in possession, in like manner as other the lands and possessions of the said archbishops and bishops.

And be it further ordained by the said Lords and Commons, That it be and is hereby left to the judgment and discretion of the said contractors, or any five of them, to sell any castles, places, or other houses, parcel of the lands and possessions aforesaid, at such rates and prices, as they shall conceive most conducing to the advantage and benefit of the commonwealth, though at lower rates than their materials are valued by the surveys returned thereof.

Rates for sale as the contractors shall think fit.

And be it further ordained, That (in case any suit shall hereafter be commenced by any person or persons, for recovery or eviction of any part or parcel of the lands or possessions of any the said late archbishops and bishops aforesaid) the trustees aforesaid, or any five or more of them, be, and are hereby authorized and enabled at the public charge, to defend the said suit, and to make good the rent returned by the survey, during such suit, and (in case of eviction of any part or parcel of the said lands or possessions) to give warrant to the treasurers to repay unto such person or persons, from whom such land or estate shall be evicted, the monies by him advanced for such purchase, together with such necessary disbursements, as he or they have laid out by reason of the said suit, which warrant shall be sufficient to the treasurers in that behalf to pay and satisfy the same.

Suits for bishops lands to be defended at the public charge.

Repayment in case of eviction.

And it is also ordained, That if after the sale of any of the manors, lands, tenements or hereditaments, of the late archbishops or bishops, the respective purchasers thereof shall make complaint unto the trustees, or any five of them, that the respective premises by them purchased, are charged with, or liable to the payment of any rents, annuities, charges, boots, boons, payments, issues, or profits whatsoever, unto any steward, auditor, receiver, bailiff, officer, tenant or other person whatsoever, which have not been formerly reprised and defalked to the said purchasers, upon the respective purchases of the premises, that then the said trustees or any five of them shall search out, hear, examine, and ascertain the same, and thereupon certify the said rents, annuities, charges, boots, boons, payments, issues or profits to the contractors, or any five of them, whereupon the said contractors, or any five of them, shall allow unto the said respective purchasers of the premises, by way of reprisal, rateably and proportionably, according to such rates as they paid or contracted for the said purchased premises, and shall accordingly ascertain and certify the same to the respective treasurers for the sale of bishops' lands, or any two of them, who are hereby required and authorized to defalk out of the moiety unpaid in, or to pay unto the said respective purchasers, according to such certificate, the respective sums so to be reprised as is aforesaid, with interest after the rate of eight

In what case allowances shall be made by way of reprisal.

The same to be certified to the treasurers.

1648.



pounds *per centum*, to be accounted from the time of the payment of their purchase money, out of the money which they shall have in their treasury; And (in case at the time of presenting such certificate as aforesaid, the said treasurers have not money enough in cash to satisfy the same) then they are hereby enjoined to make payment thereof out of the first monies which shall come into their said treasury, or to be received by them, or any other by their appointment: And are not to pay or appoint to be paid, any other sum of money whatsoever, until such reprisals as aforesaid be first satisfied and paid, and the warrant of the said trustees, together with the receipt of the said purchaser or purchasers, shall be to the said treasurers a sufficient discharge.

Trustees to print
this ordinance.

Sheriffs to pub-
lish it.

And the said trustees, or any five of them, are hereby authorized and required to cause this present ordinance to be printed, and so to send copies thereof to the sheriffs of the respective counties of the kingdom of England and dominion of Wales, where any of the manors, lands, tenements, or possessions of the said archbishops or bishops are, which said sheriffs respectively are hereby required to publish the same in their county-courts the next county-court day, after they shall receive the same, and also in open market in the shire town the next market day after the receipt thereof, and shall certify the day and place of the publication made as aforesaid, to the said trustees, within twenty days after the same shall be published.

And be it lastly ordained, That this present ordinance shall be valid according to the tenure and true meaning thereof, any former or other ordinance or ordinances concerning the sale of the lands and possessions of the said late archbishops and bishops, or any clause, article, or thing in them or any of them contained to the contrary in anywise notwithstanding.

2d December, 1647.

1649.

Anno 1649. c. 24. [Scob. p. 2. 16.]

Deans and Chapters, &c. abolished; and their Lands to be sold.

The name and
function of dean,
sub-dean, dean
and chapter, &c.
abolished.

THE Commons of England in Parliament assembled, having seriously weighed the necessity of raising a present supply of monies for the present safety of this commonwealth; and finding that their other securities are not satisfactory to lenders, nor sufficient to raise so considerable a sum as will be necessary for the said service, are necessitated to sell the lands of the deans and chapters, for the paying of public debts; and for the raising of three hundred thousand pounds, for the present supply of the pressing necessities of this commonwealth, do enact, ordain and declare, and be it enacted, ordained, and declared, that from and after the nine-and-twentieth day of March, in the year one thousand six hundred and forty-nine, the name, title, dignity, function and office of dean, sub-dean, dean and chapter, archdeacon, prior, chancellor, chanter, sub-chanter, treasurer, sub-treasurer, succenter, sacrist, prebend, canon, canon-resident, or non-resident, petty-canon, vicar choral, choristers, old vicars and new; and all other titles and offices of and belonging to any cathedral or collegiate church or chapel in England and Wales, town of Berwick upon Tweed, and isles of Guernsey and Jersey, shall be, and are by the authority aforesaid, wholly abolished and taken away; and that all and every person and persons are, and be from the said nine-and-twentieth day of March, disabled to use or hold the place, function, office, title or style of dean, sub-dean, dean and chapter, archdeacon, prior, chancellor, chanter, sub-chanter, treasurer, sub-treasurer, succenter, sacrist, prebend, canon, canon-resident or non-resident, petty-canon, choral, vicar choral, chorister, old vicar or new, in England or Wales, town of Berwick on Tweed, isles of Guernsey and Jersey, or to use, put in ure, or exercise any power, authority, jurisdiction or employment, by force or colour of any letters-patent from the crown, made or to be made, or by reason of any such name, title, dignity, office or function, or by any other authority whatsoever, in England or Wales, town of Berwick on Tweed, isles of Guernsey and Jersey, any law, statute, usage or custom to the contrary notwithstanding.

All their ho-
nours, manors,

And be it enacted and ordained by the authority aforesaid, that all honours, manors, lordships, circuits, precincts, castles, granges, messuages, mills, lands, tenements,

tenements, meadows, pastures, parsonages appropriate, tithes, oblations, obventions, pensions, portion of tithes, parsonages, rectories, vicarages, churches, chapels, advowsons, donatives, nomination, right of patronage and presentation, parks, woods, rents, reversions, services, annuities, franchises, liberties, privileges, immunities, rights of action and of entry, interest, titles of entry, conditions, commons, courts-leet and courts-baron, and all other possessions and hereditaments whatsoever; with all and every of their appurtenances, of what nature or quality soever they be, which now are, or at any time within ten years before the beginning of this present parliament, of right were belonging to the said deans, sub-deans, deans and chapters, archdeacons, priors, chancellors, chanters, sub-chanters, treasurers, sub-treasurers, succenters, sacrists, prebends, canons, canons-resident or non-resident, petty-canons, vicars, chorals, choristers, old vicars or new vicars, which they or any of them had, held, or enjoyed, in right of, or by reason of his or their said office, name, title, style, dignity, function, place or employment respectively; together with all charters, deeds, ledger-books, court-rolls, accounts, writings, and evidences whatsoever concerning the premises, or any of them, which do belong to any the said deans, sub-deans, deans and chapters, archdeacons, priors, chancellors, chanters, sub-chanters, treasurers, sub-treasurers, succenters, sacrists, prebends, canons, canons-resident or non-resident, petty-canons, vicars, chorals, choristers, old vicars or new vicars, are vested, settled, and shall be, and are adjudged, deemed, and taken to be in the real and actual possession and seisin of Sir John Wollaston, knight, Thomas Noel, William Hobson, Thomas Arnold, Owen Roe, Stephen Estwick, Robert Titchborn, George Langham, John Stone, Mark Hildesly, John White, William Wyberd, Daniel Tayler, William Rolf and Rowland Wilson, esquires; their heirs and assigns: and the said Sir John Wollaston, Thomas Noel, William Hobson, Thomas Arnold, Owen Roe, Stephen Estwick, Robert Titchborn, George Langham, John Stone, Mark Hildesly, John White, William Wyberd, Daniel Tayler, William Rolf and Rowland Wilson, and the survivor and survivors of them, and their heirs and assigns, shall hold all and every part and parcel of the said premises of the manor of East Greenwich in fee and common socage, by fealty only, and by no other tenures or services whatsoever; and shall hold all and every the premises which the said deans, deans and chapters, and other the persons before-mentioned held of any other than of the King, by the rents and other services therefore due, and of right accustomed. And the said trustees, their heirs, assigns, farmers and tenants, shall also have, hold and enjoy the premises and every of them, freed, acquitted and discharged of and from the payment of tithes, as fully as the said deans, deans and chapters, and other the persons before mentioned did hold and enjoy the same at any time, during the time of ten years before the beginning of this present parliament, or any time since: nevertheless, upon trust and confidence, that the said persons before-named for trustees, and their heirs, shall have, hold and enjoy all and singular the premises, and every of them, subject to such trusts and uses, as by the authority aforesaid shall be hereby declared and appointed, and dispose of the same, and the rents and profits thereof, as by the authority aforesaid shall be ordered and appointed.

Provided, that the said trustees, their heirs and assigns, shall not avoid any leases made for any term not exceeding three lives, or one-and-twenty years in possession, (saving and excepting such leases as for a longer time for years are good and warrantable by the laws of the land) or in such manner, as that together with the lease in being, shall not exceed three lives, or one-and-twenty years; so as the old and accustomed rent and rents, or so much rent and rents as the ancient and accustomed rent amounts unto, be reserved payable, during the said voidable term and terms of estates; and so as the said leases have not been procured or purchased of any of the said deans, deans and chapters, and other the persons afore-mentioned since the first day of December, one thousand six hundred and forty-one.

And be it further enacted and ordained by the authority aforesaid, that if any dean, dean and chapter, or other the persons before-mentioned, have at any time since the first of December, one thousand six hundred and forty-one, made

1649.

lands, tithes, parsonages, rectories, vicarages, churches, chapels, advowsons, &c.

Charters, deeds, &c. vested in trustees.

Tenure.

Discharged from the payment of tithes.

Trustees not to avoid any lease made for any term not exceeding three lives, or 21 years in possession.

Grant or lease made by any dean, dean and chapter, since

1649.

the first of December, 1641, to be void.

Leases surrendered since the first of December, 1641.

made any grant or lease to any person or persons, body politic or corporate, of any the honours, manors, lordships, messuages, lands, tenements and hereditaments, or any other the premises aforesaid, or any of them, in right, or by reason of their said office, place, function or dignity, the same grant or lease shall be utterly void, and of none effect, and the person or persons, body politic or corporate, unto whom the same was made, shall have no benefit thereby.

Provided, and be it enacted and ordained, and it is hereby enacted and ordained, that if any person or persons, body politic or corporate, at any time or times since the said first of December, one thousand six hundred and forty-one, who had any grant or lease for one or more life or lives, or any number of years of the premises, or any part thereof, as is aforesaid, did surrender the same, to the end that he or they might have a new grant or lease granted or made unto him or them, and had such new grant or lease accordingly made unto him or them, which by this present act is made void, that the said person or persons, body politic or corporate, who has so surrendered any such former grant or lease, his and their heirs, successors, executors, administrators and assigns, shall have, hold, possess and enjoy such time and term as he or they had in any part of the said premises, by virtue of any such former lease or leases, in such sort and manner as he or they should have had, held and enjoyed the same, if no such surrender had been made; subject, nevertheless, to such payments of rents, and other services, covenants, and conditions and agreements, as in the said former grants or leases were expressed and contained; (saving unto all and every person and persons, their heirs, executors and administrators, bodies politic and corporate, and their successors, other than such person or persons as shall or may claim, or pretend to have any right, title or interest unto the premises, or any part thereof, as King of England, or his heirs or successors, deans, deans and chapters, and other the persons aforesaid, and other than the founders and donors, as founders and donors of and to the said deans, deans and chapters, archdeacons, priors, chancellors, chanters, sub-chanters, treasurers, sub-treasurers, succenters, sacrists, prebends, canons, vicars, chorals, choristers, old vicars and new, and other the persons before-mentioned and their heirs) all such right, title, interest and possession, rights in law or equity, entries, annuities, commodities, fees, and other profits which they or any of them before the said first day of December, one thousand six hundred and forty-one, ought lawfully to have had, in or to the premises, or any part or parcel thereof, as if this act had never been had or made: also saving to all such person or persons as have adhered to the parliament, all such estate as he or they since the first day of May, *Anno Dom.* one thousand six hundred and forty-one, have forfeited or made forfeitable for not payment of rent, or not performing of services to any of the said deans, deans and chapters, or other the persons before-mentioned; except it be in the case of a lease made utterly void by this act, by reason the same has been procured or purchased of any the said deans, deans and chapters, or other the persons before-mentioned, since the aforesaid first day of December, *Anno Dom.* one thousand six hundred and forty-one.

Revenues and rents for maintenance of grammar-schools, highways, alms-houses, &c.

Provided also, and it is hereby further enacted and ordained by the authority aforesaid, that all and singular the revenues, rents, issues, fees, profits, sums of money, and allowances whatsoever, which before the said first day of December, one thousand six hundred and forty-one, have been, and then ought to be paid, disposed and allowed unto and for the maintenance of any grammar-school or scholars, or for or towards the reparation of any highway, causeway, bridges, school-house, alms-house, or for any other charitable use, payable out of any the premises; or which are chargeable, or ought to issue out of, or to be paid for or in respect of the premises or any of them, shall be, and continue to be paid and allowed, as they were before the said first of December, one thousand six hundred and forty-one, any thing in this present act to the contrary in any wise notwithstanding.

This act not to extend to any college, church,

Provided also, that this act, nor any thing therein contained, shall extend to any college, church, corporation, foundation or house of learning in either of the

the universities within this commonwealth, nor to the corporation of Christs-church in Oxford, of Henry the Eighth's foundation; nor to any manors, lands, tenements and hereditaments thereunto belonging; nor to the revenues of any public professor or reader in either of the universities; nor to the foundation of any of the schools of Westminster, Winchester or Eton.

1649.

corporation,
foundation, or
house of learn-
ing in either of
the universitie.

And for the better encouragement and security of such person and persons as shall be purchasers of the said lands, be it enacted, ordained and declared by the authority aforesaid, that Sir John Wollaston, and other the persons before-named as trustees, the survivor and survivors of them, and the heirs of the survivor of them, shall stand and be seised of all and singular the said premises, vested and settled in them and their heirs (excepting parsonages appropriate, tithes appropriated, fee-farm rents issuing out of tithes, oblations, obventions, portions of tithes, parsonages, vicarages, churches, chapels, advowsons, donatives, nominations, rights of patronage and presentation) until the sale and conveyance thereof shall be made unto any person or persons, bodies politic or corporate, as shall be purchaser or purchasers thereof, or of any part thereof, for the paying and satisfying the respective lenders within this act; and such sums as are by this act transferred upon the said security, and of the remainder of the said premises that shall be left unsold, after such satisfaction made, to such further use and uses as shall hereafter be declared by the authority aforesaid.

Parsonages and
tithes appro-
priate, &c.
excepted.

And be it further enacted and ordained, that the said persons aforementioned as trustees, or any five or more of them, shall have like power and authority to make, nominate, and appoint from time to time, by writing under their hands and seals, fit and able persons, such as they shall think fit, to survey the premises in any county or counties of England or Wales, who are hereby enabled and authorized to keep courts of survey, for the better discovery of the premises and the value thereof, and other things concerning the same, who are hereby authorized, enabled, and required to observe and keep, in relation to the said service, such rules, directions, and instructions, as the surveyors of the late bishops lands are appointed to observe, in relation to the surveying of the said bishops lands; and are expressed and mentioned in an ordinance of parliament, dated the sixteenth day of November, one thousand six hundred and forty-six, intituled, "An Ordinance of the Lords and Commons assembled in Parliament for appointing the Sale of the Bishops Lands for the Use of the Commonwealth;" and they, or any three of them, are hereby authorized and enabled to execute and put in execution all the powers and authorities that the aforesaid surveyors, or any three of them may or might have done, by virtue of any power or authority given unto them by the said ordinance and instructions. And all sheriffs, mayors, bailiffs, justices of the peace, and other persons, are hereby required to be aiding and assisting to the said surveyors, or any of them, in the executing of this act. And the said surveyors are hereby authorized to demand, require, receive, and put into safe custody, the charters, deeds, books, accounts, rolls, writings, and evidences, that concern the premises or any part thereof, to the end the same may be put into such place as the said trustees, or any five or more of them shall appoint.

Trustees to have
power to ap-
point surveyors.

An ordinance of
the 16th of No-
vember, 1646.

And it is further enacted, that the said trustees, or any three or more of them, are hereby authorized and required to administer to all and every the said surveyors (who are enjoined to take the same) an oath *in hæc verba*; (viz.)

Trustees autho-
rized to admini-
ster an oath
to the surveyors.
The surveyor's
oath.

I, A. B. do swear, that I will, by the help of God, faithfully and truly, according to my best skill and knowledge, execute the place of Surveyor, according to the purport of the act intituled "An Act of the Commons in Parliament assembled, for the abolishing of Deans, Deans and Chapters, Canons, Prebends, and other Offices belonging to any Cathedral or Collegiate Church or Chapel in England or Wales;" and shall use my best endeavour and skill to discover the state herein mentioned, and every part thereof which shall be given me in charge; and to find out the true values and improvements thereof, and thereof shall make true surveys, according to my best skill and cunning; and the same from time to time to deliver, or cause to be delivered in writing, close sealed up, unto the Register for the time being in that behalf appointed;

and

1649.

and also a true copy or duplicate thereof, close sealed up, unto the said trustees, or any two of them : and this I shall justly and faithfully execute, without any gift or reward, directly or indirectly, from any person or persons whatsoever (except such allowances as the said trustees, or any five or more of them shall think fit to make unto me for my pains and charges in the executing of the said place and office).

Trustees to call
to account sur-
veyors.

And the said trustees, or any five or more of them, are hereby authorized from time to time to call to account any surveyor or surveyors, or other officers by them named and appointed ; and if they shall find them or any of them deficient or unfaithful, in pursuance of the duty or trust in them reposed ; that then they shall and may remove them, or any of them which they shall so find deficient or unfaithful, and nominate and appoint others in their stead.

Trustees to em-
ploy counsel,
and appoint
stewards of
manors.

And it is further enacted, that the said trustees, or any five or more of them, are hereby authorized to take unto them such counsel learned, and to appoint such stewards of manors, and other officers, as any five or more of them shall think necessary ; and to give such fees, and make such allowances to them or any of them, as they shall hold fit and necessary. Provided always, that this act shall not extend to the putting out of any stewards of any liberties or courts, formerly appointed and made by virtue of any ordinance of parliament, but that they shall continue and be, during such time as the said liberties and courts shall remain and be in the hands of the said trustees ; and that they shall have and receive all such fees, profits, and allowances as formerly were allowed them ; this act, or any other thing to the contrary notwithstanding.

Ordinance of
2d Dec. 1647.

And it is further enacted, that the said trustess, or any five or more of them, shall have like power and authority, and are hereby required and authorized to observe such orders and directions, in relation to the premises, as the trustees for bishops lands might or may observe and keep, in relation to the sale of the said lands ; which are contained in an ordinance of the 2d of December, 1647, intituled, " An Ordinance for removing Obstructions in the Sale of Bishops Lands."

Trustees not to
contract but with
the tenants for
thirty days.

And be it further enacted, that Sir William Roberts, knight, John Blackwel, James Russel, Thomas Ayres, Robert Fenwick, Edward Cressit, John Heyling, of Grays-Inn, Nathaniel Wetham, Roger Smith, Dr. William Parker, Josias Barners, and Clement Oxenbridge, Esqs., or any five or more of them, shall have power and authority, and are hereby empowered and authorized to treat, contract, and agree with any person or persons, body politic or corporate, for the sale of the said premises, or any part thereof, upon such particular or certificate and values as shall be delivered in unto them under the hand of the register or his deputy, as hereafter shall be by this act nominated and appointed. Provided, that the said contractors shall not treat or contract with any person or persons, body politic or corporate, other than the immediate tenant or tenants of the said deans, deans and chapters, and other the persons beforementioned for the respective lands, tenements, and hereditaments, which he or they so hold for the space of thirty days, to be accounted from the return of the survey thereof. And in case such tenant or tenants do not agree, contract, and subscribe his or their contract within the said thirty days, that then the said contractors may proceed to the sale thereof to any other person or persons, bodies politic or corporate whatsoever.

Lands not to be
sold under 12
years purchase.

And it is further enacted, that the said contractors shall not sell any of the lands, possessions, or hereditaments of the said deans, deans and chapters, and other the persons aforementioned in possession, under twelve years purchase ; saving and excepting castles, houses, and palaces, according as is directed by an ordinance of the Lords and Commons assembled in parliament, of the second of December, 1647, intituled, " An Ordinance of the Lords and Commons assembled in Parliament, for removing Obstructions in the Sale of Bishops Lands." And the said contractors shall not sell a reversion of the said lands and hereditaments upon a lease for one life, under six years purchase ; and that a reversion of such lands and hereditaments upon a lease for two lives, shall not be sold under three years and a half's purchase ; and that a reversion of the said premises upon a lease for three lives, shall not be sold under two

A lease for one
life not under
six years pur-
chase.

years

years and a half's purchase. And where any tenant or tenants of any the premises, claim a right to have a customary estate in reversion, or by the custom, may grant or make leases for life or lives, the reversion shall be so proportionable to this rule. And the said contractors shall not sell a reversion of the said premises upon a lease for seven years, under six years and a half's purchase; and that a reversion upon a lease for fourteen years shall not be sold under four years and a quarter's purchase; and that a reversion upon a lease for one-and-twenty years shall not be sold under three years purchase; and all other reversions upon leases for more or fewer years shall be sold proportionable to this rule.

1649.

Other rates prescribed.

And it is further enacted, that the said contractors named in this act, shall take the oath hereafter expressed, before any three of the said trustees, *in hæc verba*; (viz.)

I, A. B. do swear, that I will, according to my best skill and knowledge, faithfully discharge the trust committed unto me, in relation to an act of parliament "For abolishing of the Office of Deans, Deans and Chapters, Canons, Prebends, and all other Offices and Places belonging to any Cathedral or Collegiate Church or Chapel in England and Wales:" and that I will not, for favour or affection, reward or gift, or hopes of reward or gift, break the same. The contractor's oath.

And the said contractors are hereby authorized and required to observe such other instructions as are mentioned in the instructions of the said ordinance concerning the contractors for sale of the bishops lands. And it is further enacted, that the contractors hereby nominated and appointed, shall and may, and are hereby enabled, authorized and required, in the like cases that shall happen before them, in or concerning the said premises, to observe, put in ure and execution the like powers and authorities, that the contractors for the sale of bishops lands do, or may do by virtue of an ordinance of parliament of the second of December, one thousand six hundred and forty-seven, intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for removing Obstructions in the Sale of Bishops Lands." Contractors' power.

And for the better carrying on of the said service, be it enacted and ordained by the authority aforesaid, that Henry Scobell, esquire, shall be register and keeper, and shall have the custody and keeping of all records, charters, evidences, court-rolls, ledger-books, writings, books of survey, rentals, certificates, and other things, of or concerning the lands and possessions of the said deans, deans and chapters, and other the persons before-mentioned; or concerning any the honours, manors, castles, lands, tenements, hereditaments, or other the premises herein-mentioned; and shall from time to time, as aforesaid, deliver unto the purchaser or purchasers of the said premises, or any part thereof, such records, writings and evidences as concern the premises by him or them purchased. And that all and every the surveyors of the premises shall make their returns of all and every their respective surveys by them taken from time to time, to the said register, who shall make entry by himself or deputy, of all such surveys, certificates, and other proceedings, as shall from time to time be returned by the surveyors of the premises, or any three or more of them, being first allowed by the surveyor-general. And the said register shall also make forth, value, rate, and sign all and every particular and particulars of the premises, or any part thereof, whereupon any contract or contracts for sale or otherwise shall or is to be had or made; and every such particular so rated, valued and signed, shall from time to time be a good and sufficient ground and authority for the said contractors or any five or more of them, to proceed to sell accordingly; and the said register shall make entry of all and every such contract and contracts, and other proceedings thereupon; to have, hold, execute and enjoy the said office or place of register and keeper, by himself or his sufficient deputy, together with the yearly fee of one hundred pounds, payable out of the receipts, rents and revenues arising out of the premises, by the hands of the treasurers herein mentioned, on the first of January, and first of July, half yearly, by equal portions; which said yearly fee of one hundred pounds, the said treasurers are hereby required and authorized to pay accordingly; and that the acquittance of the said register shall be a good discharge to the said treasurers and Custody of records. Records and evidences belonging to the premises, to be delivered to the purchasers. Surveys to be returned to the Register, who shall enter the same.

1649.

or more of them, for the ends and purposes contained in this present act; and that the receipt of such person or persons to whom such warrant is made, shall be a good discharge to the said treasurers.

Thirdly, that the said treasurers, or any two of them, after their receipt of the register-accountant's certificate named in this act, of what principal and interest is due to any person or persons, body politic or corporate, who shall be lenders within the intent of this act, the said treasurers shall and are hereby authorized to give to such person or persons, a receipt or receipts, as well for the old debt and interest stated and certified as aforesaid, as also for the monies lent towards the advancement of the said three hundred thousand pounds. And it is further enacted and ordained, that the receipt or receipts given by the said treasurers as aforesaid, or any two of them, shall be a good and sufficient authority for such person or persons, body politic or corporate, their executors, administrators, and assigns, to require payment of the sum therein mentioned, together with interest according to six pounds *per centum*, out of the rents, issues, and profits of the said premises; and in case of failure thereof, to be allowed him or them, their assignee or assigns, in the purchase of the said premises, or any part thereof. And it is further enacted by the authority aforesaid, that it shall and may be lawful for any person or persons, bodies politic or corporate, to grant or assign his or their public faith monies, bills, certificates, or receipts, to any other person or persons, which person or persons shall have the like benefit and advantages, to all intents and purposes, as the first lender might have had within the intent of this act: and it is further enacted, that it shall and may be lawful for any person or persons, body politic or corporate, who have any monies due or owing unto them upon the said security, to grant and assign the same to any person or persons, which shall be allowed by all persons to whom it shall appertain, to make allowance thereof, as if such receipt or receipts had been originally made in the name of such assignee or grantee.

And it is further enacted, that Colonel Robert Manwaring shall be and is hereby constituted and appointed register-accountant for the said service; who is hereby authorized upon the bills, receipts, or certificates, given by any committee (where by ordinance of parliament they are empowered to give the public faith,) or from treasurers, receivers or collectors of money, plate, arms, horses with their furniture or arms, advanced on the public faith, to ascertain the principal and interest thereof, and the same to certify unto the said treasurers, or any two of them: provided that the said register-accountant do not allow of any receipt, certificate, or bill of public faith, but such as shall be allowed by the trustees named in this act, or any five or more of them, who are from time to time to observe such orders, directions, and instructions, as they shall have and receive from the parliament concerning the premises: and in regard of the many neglects and imperfections in the surveys of the late bishops lands, the sale of the same hath been much retarded, for prevention of which the commons assembled in parliament do ordain and appoint Colonel William Web, surveyor-general of all the said premises; who is hereby authorized, enabled, and required to observe the instructions for the surveyor-general mentioned in this act. And to the end the surveys may be speedily perfected, be it enacted, that the trustees and register are hereby enjoined forthwith, after the return of any survey or surveys unto them, to send them unto the said surveyor-general as they come to their hands.

Instructions for the Surveyor-General.

Surveys.

First, the said surveyor-general shall, within six days next after he shall receive any of the said surveys from the said trustees and register, peruse them, and shall return them back to the trustees and register, with his allowance and approbation thereupon, if he finds them fit for a purchaser to proceed upon; after which, the register shall and may make out a particular of the whole survey for the purchaser to contract upon.

Insufficient surveys to be amended.

Secondly, If the surveyor-general shall find the surveys insufficient for to contract upon, that then he shall, within six days after receipt thereof, transcribe

scribe so much of the said survey as is imperfect, and return the same unto the respective surveyors, and certify them the causes of his exceptions, who are hereby enjoined forthwith to amend the same; but if they cannot, to certify him the cause why they cannot amend the same; and notwithstanding the imperfections, the said surveyor-general is to return the surveys to the trustees and register, so that the immediate tenants of any part of the premises expressed in the survey that is perfect, may proceed to purchase.

Thirdly, The said surveyor-general shall and may, with the consent of three of the contractors, rectify and amend mistakes, errors, and other matters (that are not of substance) in any of the said surveys: and in all cases where the said surveyor-general can by credible information or proof amend any survey without any return to the surveyor, that then he, with the advice and consent of three of the contractors, shall and may amend the same.

The surveyor-general shall rectify mistakes in the surveys.

Fourthly, Where any person or persons shall neglect, or cannot make his or their estate or estates appear unto the surveyors, or have not entered his or their claim with the surveyors for that place or county, in which the said premises lie; yet if such person or persons shall enter his claim, and make his estate to appear by due proof upon oath unto the said surveyor-general, (who is hereby authorized to administer the same,) within forty days after the return of the said survey, that then the said surveyor-general shall enter and allow the same; which being by him certified to the register and trustees, it shall be a good and sufficient ground for the register to make out a particular, and for the contractors to contract, and the trustees to convey.

Entry and allowance of claims.

Fifthly, That the surveyor-general shall appoint and limit the day and time when the respective surveyors shall begin their respective employments, and how long the same shall continue, and upon just cause to enlarge the same.

Time of beginning the surveys.

Sixthly, That the respective surveyors shall from time to time certify their proceedings unto the surveyor-general, and keep such correspondence with him, as that he may know in what places they are, and upon what employment.

Surveyors to certify their proceedings.

And be it further enacted, that the said register shall cause one able and sufficient clerk, such as the contractors shall approve of, to be attending on them at all their meetings, and to enter all their orders and proceedings, and to observe and obey such commands and directions concerning the premises, as they or any five or more of them shall direct and appoint: and that the said books of entries shall remain in the custody of the said contractors, or such of them as the major part of them shall appoint. Provided, that no copies of the said entries be taken out of the said books, but by the said register, his deputy, or the said clerk.

Register's clerk.

Books of entries.

And be it further enacted and ordained, that the said register, his deputy for the time being, and the said clerk, shall severally take before three of the said trustees, the oath prescribed in the ordinance of the fifth of March, one thousand six hundred and forty-six, intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for the better explaining and executing former Ordinances for the Sale of Bishops Lands."

And be it further enacted and ordained, that none of the said contractors, or any other to their or any of his or their use or uses, or in trust for them or any of them, directly or indirectly, shall or do purchase the said premises, or any part thereof: and if any of the said contractors, or any in trust for them or any of them, shall purchase any of the said premises, he and they shall forfeit his or their estate so purchased, and the monies paid or to be paid for the same. Provided always, that if monies do not come in to satisfy the said contractors, trustees and treasurers, their salaries allowed by this act, that then they shall and may have part of the said premises, in lieu of their said salary, according as shall be ordered and appointed by authority aforesaid.

Contractors not to purchase.

And be it further enacted, ordained and declared by the authority aforesaid, that all gifts and grants, or augmentations made before the twentieth day of April, one thousand six hundred and forty-nine, by one or both houses of parliament, or any persons authorized thereunto by authority of parliament, of the said premises, or any part thereof, or of any of the rents and profits of any of the said premises, for the maintenance of a preaching ministry, preacher, lecture

Gifts, grants, and augmentations.

1649.

ture or school in England or Wales, and all ordinances and orders concerning the same, be and shall be, and are hereby declared to be null and void. Provided notwithstanding, that this act, nor any thing therein contained, shall extend to take away the present rents, issues and profits that shall become due unto any minister, lecturer, or school-master, until the sixth day of January, one thousand six hundred and forty-nine, by reason of his or their augmentation settled upon him or them by authority of parliament, unless the premises out of which such augmentation doth issue, be sold and conveyed away to any purchaser or purchasers, before the said sixth day of January, one thousand six hundred and forty-nine. And the said treasurers are hereby required and enjoined to make payment thereof accordingly.

Committee.
Impropriations,
tithes, donatives,
parsonages, rec-
tories, vicarages
and portions of
tithes.

And it is further enacted, that such committee as shall be appointed by the parliament, shall have and exercise all and every the powers given to the committee appointed by ordinance of parliament of the one-and-twentieth of November, one thousand six hundred and forty-eight, for the removing obstructions in the sale of bishops lands; and that they do take special care, that the rents, issues and profits of the impropriations, tithes, parsonages and vicarages belonging to the said deans and chapters, and other the persons before-mentioned, be employed for the maintenance of a preaching ministry, and encouragement of learning in England and Wales; and that they take into their consideration the present disposal of all the rents and revenues of all the impropriations, tithes, donatives, parsonages, rectories, vicarages and portion of tithes belonging to the said deans, deans and chapters, and other the persons aforementioned, that they may be the better know how, where and to whom (for the future) to make disposals thereof, who are hereby authorized to give, grant, order and dispose of the same accordingly, until it shall be further ordered by parliament.

Payment of the
rents and profits
of tithes, impro-
priations, dona-
tives, parson-
ages and vicar-
ages.

And be it further enacted and ordained, that the trustees do from time to time issue out warrants to the said treasurers, for the paying the rents, issues, and profits of the said tithes, impropriations, donatives, parsonages and vicarages, as they shall be settled by the said committee; and that the persons employed in and about the said service may have due encouragement, be it enacted and ordained by the authority aforesaid, that the contractors mentioned in this act, shall have and receive three-pence in the pound for all such lands, tenements and hereditaments of the said deans, deans and chapters, and other the persons aforementioned, which shall be contracted for, and sold by them, and conveyed according to the rates for which they shall be sold; and that the said trustees, excepting the said treasurers, shall have and receive three-pence in the pound for all such of the said lands as they shall convey, according to the rates for which they shall be sold: and that the treasurers named in this act shall and may deduct out of all monies received by them, and also out of all monies to be allowed by them upon defalcations for any purchase made of the said lands, two-pence in the pound, according to the rate for which the said premises shall be sold, for their own salary, and paying their clerks and tellers. Provided, that the said deduction be made according as the purchaser pays in, or defalks his purchase-money, and not otherwise. And that the register-accountant shall have for his fee, the sum of two hundred pounds *per annum*, for executing the office of register-accountant of the said premises, payable out of the same rents and proceed of the said premises by the treasurers thereof for the time being, on the first of November, and the first of May, half-yearly, by equal portions. And the said treasurers shall allow and pay from time to time such clerks as the register-accountant shall employ under him in the said office, such salary as they or any two of them shall think fit to allow. And that the surveyor-general for the said premises shall have for his fee for him and his clerks for the said service, the sum of one hundred and fifty pounds *per annum*, payable out of the rents and proceed of the said premises, by the treasurers thereof for the time being, on the first of January, and on the first of July, half-yearly, by equal portions.

Trustees to
make leases of
the premises.

And be it further enacted, that the said trustees, any five or more of them, or such person or persons as they, as aforesaid, shall authorize under their hands and seals, shall make a lease or leases of the said premises or any part thereof, which

1649.

which shall be out of lease for one year or less, and so from year to year, or less till the premises be sold, reserving the best rent they can get for the same. Provided, that such of the said premises as are grantable by copy of court-roll, according to the custom of any honour or manor, shall be demised by copy of court-roll respectively. And be it further enacted and ordained by the authority aforesaid, that all and every body or bodies politic or corporate, in England and Wales, shall have power and capacity, and are hereby enabled to take and purchase to themselves and successors, any of the said honours, manors, lands, tenements and hereditaments to themselves, their heirs and successors for ever, without suing forth any license or licenses of alienation on mortmain, any law, statute, or charter, to the contrary in anywise notwithstanding.

Bodies politic
may purchase
without license
of alienation.

And be it further enacted, ordained and declared by the authority aforesaid, that all and every person and persons, body politic and corporate, who shall contract for any of the said premises, shall pay in or defalk the first moiety of his purchase monies within eight weeks after his contract made, and shall likewise prosecute and procure his or their respective conveyances from the said trustees appointed to convey the premises within the said eight weeks, or otherwise he and they shall incur the penalties of such defaulters as are mentioned in an ordinance of the three-and-twentieth of March, one thousand six hundred and forty-seven, intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for the Explanation and better Execution of former Ordinances of Parliament, for the Sale of Bishops Lands in England and Wales," unless he or they can procure from the said contractors, or any five or more of them, upon good cause shewn, and to be allowed by them, a certificate or certificates for further time to perfect his or their conveyance; which certificate and further license or licenses, the said contractors as aforesaid are hereby authorized to give: and the said contractors and the treasurers named in this act respectively are hereby enabled, authorized and required, as there shall be occasion, to put the said ordinance in execution, according to the intent and meaning thereof.

Bishops lands.

And be it further enacted and ordained by the authority aforesaid, that the committee so to be appointed as aforesaid, shall be a committee for the removal of obstructions in the sale and conveying of the said premises, and that they shall and may, to all intents and purposes, execute all powers and authorities concerning the premises, as the committee for removing of obstructions in the sale of bishops lands, according to an ordinance of the one-and-twentieth of November, one thousand six hundred and forty-eight, intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for removing Obstructions in the Sale of Bishops Lands," might, may or ought to do: and the contractors, trustees, treasurers, register-accountant, and surveyor-general, named in this act, and all other persons employed in or about the said service, are required to observe such orders and directions as from time to time they shall receive from the said committee: and the said committee so to be appointed, shall and may allow all incident charges for the necessary carrying on of the said service.

Sale of bishops
lands.

And it is further enacted by the authority aforesaid, that the trustees named in this act for the conveying of the said premises, and the purchaser or purchasers of all or any of the honours, manors, lands, tenements or hereditaments, of or belonging to the said deans, deans and chapters, and other the persons aforementioned, their and every of their respective heirs and assigns, as also the trustees appointed for the conveying of the lands of the late archbishops and bishops, and the purchaser and purchasers of all or any of the honours, manors, lands, tenements or hereditaments of the said late archbishops and bishops, their respective heirs and assigns respectively, shall have, hold, use and enjoy, all the like benefits, privileges, rights, usages and customs; and likewise take all advantages, benefits of conditions, broken forfeitures, or non performance of covenants, entries or actions, as the said respective deans, deans and chapters, and other the persons before-mentioned, or their respective successor or successors might have done, or ought to have had or enjoyed, or as the respective archbishops or bishops, or their respective successor or successors, might do, or ought to have done, had or enjoyed.

Trustees and
purchasers to
have all benefits
enjoyed by
bishops and
deans and chap-
ters.

And

1649.

Receipt of rents.

Surveyors to make speedy, exact and particular surveys of all the donatives, parsonages, vicarages, rectories, tithes and impropriations,

Easement of the nation from assessments.

And be it further enacted and ordained, that the acceptation or receipt of any rent or rents, since the first of December, one thousand six hundred and forty-one, by any person or persons for any lands, tenements or hereditaments belonging to any archbishop or bishop, or any dean, dean and chapter, or other the persons before-named, shall not confirm, ratify or make good any lease or grant made by them or any of them, which were or are voidable in law.

And be it further enacted, that the said trustees give in charge to the said respective surveyors, the surveying of all and every the donatives, parsonages, vicarages, rectories, tithes and impropriations of and belonging to the said deans, deans and chapters, and others the persons before-named; and they are hereby enjoined to make speedy, exact and particular surveys of them and every of them, and return what is the value of every the said parsonages, and who the present incumbent is, and likewise the present rent of every the said donatives, vicarages, rectories and tithes, and what is the improved rent and the interest of the particular tenant, and also who is the present tenant, and what maintenance the incumbent has, and how it does arise; and likewise what charges are issuing out of them or any of them, and to whom, and to what use or uses: provided that this act, nor any thing therein contained, shall be construed or intended to vest in the said trustees a certain messuage or tenement, called the Hill-house, situate in or near Chatham in the county of Kent, late belonging to the dean and chapter of Rochester, now employed for the use of the navy, but that the said messuage or tenement, with the gardens, orchards, out-houses and buildings thereunto used or belonging, shall be employed for the use of the navy.

And forasmuch as the Commons of England in Parliament assembled are very sensible how heavy the assessments lie upon the people of this nation, which as yet they are necessitated to continue for the carrying on the necessary service of this commonwealth; and being resolved to free the people of this nation from free quarter, and desirous so soon as it will stand with the safety of the commonwealth, not only to ease, but free the people of this nation from assessments; to do which, they find no readier way than by clearing the present engagements and charges which lie on the public treasuries of the commonwealth, and by applying them towards the maintenance of the army in England, and for the effectual prosecution of the war in Ireland, and setting forth and continuing at sea a stronger navy than usual, for preserving the trade and traffic of this commonwealth; do therefore enact and ordain, that the several and respective sum and sums of money due and payable out of and from the receipts of the grand excise, or the receipts for the composition of delinquents at Goldsmiths-hall unto any person or persons, body politic or corporate, their assignee or assigns hereafter respectively mentioned shall be, and are hereby transferred and removed of and from the said respective receipts and securities, unto and upon the security of the lands of the deans and chapters, and other the persons before-mentioned (*viz.*) out of, and from the receipt of the grand excise payable to Colonel Massey with interest, nine hundred and forty-four pounds six shillings and two-pence: to Colonel Birch with interest, for Ireland, eight hundred and fifty-seven pounds four shillings and eight-pence: to Merchant Adventurers' Company with interest, thirteen thousand eight hundred and four pounds: To Major-General Brown with interest, five thousand pounds: to Ely and Crowland with interest, four thousand one hundred and thirty-eight pounds five shillings and sixpence: to Adam Eires for northern officers, three thousand five hundred and twenty-six pounds twelve shillings: to the Committee of both Kingdoms, and Sussex forces at Abingdon with interest, fourteen hundred pounds: to Dover garrison with interest, five hundred pounds: to Yorkshire horse with interest, five thousand pounds: to the Lord Ferdinando Fairfax reduced officers with interest, seventeen thousand one hundred and thirty-eight pounds ten shillings and eleven-pence: to Major Bosa with interest, one hundred pounds: to Captain Strachan with interest, two hundred and ninety-three pounds: to Eastern Association, part of the army's one hundred and fifty thousand pounds, twenty thousand pounds: to Dutch officers with interest, seven thousand eight hundred and fifty-two pounds, five

five shillings and eight-pence: to Ireland with interest, twenty thousand pounds: to Sir Thomas Maleverer with interest, one thousand pounds: to Colonel Hampden's executors two thousand pounds: to Patrick Young with interest, one thousand pounds: to Alderman Aldworth with interest, five thousand two hundred and seventy-four pounds six shillings and eleven-pence: to Colonel Harvey one thousand four hundred and forty-eight pounds: to the Lord Broghill two thousand pounds: to Captain Gardiner one thousand four hundred and forty pounds seven shillings and seven-pence: to the Scots officers thirteen thousand seven hundred and seventy-four pounds seven shillings: to Colonel Jephson with interest, one thousand pounds: to Sir Rich. Houghton seven hundred and seventy-nine pounds five shillings and nine-pence: to William Sike with interest, three thousand nine hundred and sixty-three pounds eighteen shillings and five-pence: to Colonel Tho. Barwis two thousand seven hundred and eighty-five pounds six shillings and eleven-pence: to Hen. Stephens five hundred pounds: to Colonel Herbert with interest, seven hundred and thirty pounds four shillings: to Colonel Barker four thousand nine hundred and twenty-six pounds: to M. John Sleigh with interest, six hundred pounds: to M. Nich. Gold part of four thousand four hundred and forty-three pounds twelve shillings and four-pence, two thousand four hundred forty-three pounds twelve shillings and four-pence: to M. Nich. Gold the other part of the four thousand four hundred and forty-three pounds twelve shillings and four-pence with interest, being two thousand pounds: to Mrs. Coriton with interest, six hundred and thirty-two pounds: to the Eastern Association with interest, ten thousand pounds, and out of, and from the receipts of the compositions of delinquents at Goldsmiths-hall payable: to John Selwyn, esquire, two thousand five hundred pounds: to Benjamin Valentine, esquire, two thousand five hundred pounds: to Captain Samuel Playford with interest, three hundred pounds: to M. Wheeler and Mr. Bell for repair of Margaret's Westminster, two hundred pounds: to Christopher Metcalfe with interest, two thousand pounds: to Patrick Young, esquire, with interest, one thousand pounds: to Captain Samuel Gardiner seven hundred and fifteen pounds: to Mr. Richard Turner, M. Maurice Gething, &c. with interest, nine thousand six hundred and twenty-five pounds three shillings and one penny: to the Lady Anne Harecourt one thousand pounds: to Dr. John Bastwick with interest, five hundred pounds: to Major-General Massey assigned to Mr. Leithienler, one thousand pounds: to Major-General Brown, four thousand and sixteen pounds: to Adam Eire, Thomas Greathead, &c. trustees for the use of certain reduced officers under the late Lord Fairfax, four thousand pounds: to Colonel Barton, one thousand three hundred and ninety-five pounds nineteen shillings and two-pence: to Colonel Mitton one thousand eight hundred and ninety-seven pounds: to the county of Lincoln, two thousand four hundred and fifty pounds: to the reduced officers, fifteen thousand nine hundred and six pounds eight shillings and four-pence: to Sir William Lister, knight, five hundred pounds: to the Lord Gray of Wark, one thousand sixty-nine pounds ten shillings: to Sir William Waller, knight, eight hundred and forty-one pounds ten shillings: to Colonel Mitton, in case he has received no part thereof out of the growing rents of the delinquents' estates or otherwise since the said sum was charged upon the compositions of particular delinquents at Goldsmiths-hall, five thousand pounds: to the city of York, four thousand and eighty pounds: to the county of Derby, two thousand four hundred and fifty pounds: to Richard Winwood, esquire, rest unpaid of five hundred pounds with interest, one hundred and fifty pounds: to Major Samuel Birch, five hundred pounds: to Sir Francis Knollis, Zouch Tate, &c. trustees, to the use of Mistress Eliz. Burghill, widow, and her children by her late husband, of the sum of two thousand eight hundred and twenty-six pounds, two parts amounting to one thousand eight hundred and eighty-four pounds, transferred for the benefit of her children: to the Treasurers of the Adventurers for the additional forces for Ireland by sea, or to the Lord Forbes, &c. one thousand seven hundred and four pounds seventeen shillings and four-pence: to William Sikes with interest, four thousand pounds: to Philip Skippon, field-marshal, with interest, five hundred pounds: to Alderman Pennington

1649.

ton fifteen hundred pounds : to the Lady Viscountess Moore, one thousand pounds : to the Lady Vere, one thousand pounds : to Sir Robert Harley, &c. the Committee of Hereford, six thousand seven hundred and forty pounds, whereof seven hundred and fifty pounds to Colonel Birch : to the Committee of Petitions where Mr. Goodwin has the chair for the use of divers Scots officers with interest, five thousand seven hundred and six pounds eighteen shillings and three half-pence.

And be it enacted, That all and every the sum and sums aforesaid, due and payable from or out of either or both of the aforesaid receipts, and transferred by this act from the aforesaid securities, shall be satisfied and paid to the respective person or persons, bodies politic and corporate, their assignee or assigns, out of such monies as shall be raised by the sale of the honours, manors, lands, tenements and hereditaments of the deans and chapters, and others the persons before mentioned; together with the sum of six hundred thousand pounds to be advanced and secured by virtue of this act, or so much thereof as shall be advanced and secured by the treasurers named and appointed herein, or by the purchasing of them, or any part of them (advowsons and impropriations excepted). And the said treasurers are hereby authorized and required to proceed to give satisfaction, or make payment to the respective creditors, his or their assignee or assigns accordingly. And be it further enacted and ordained, That it shall and may be lawful to and for any of the creditors, or persons, their assignee or assigns of any sum or sums of money, for which by this act, the lands of the deans and chapters, and other the persons before-mentioned, are given for security, or with which the premises are hereby charged and made liable to satisfy or pay, to assign his or their right, title or interest in any sum or sums of money so due unto him or them, to any person or persons whatsoever, and that every such assignee or assigns shall have like liberty, right, title and advantage to all intents and purposes, as is due and of right belonging to any of the aforesaid creditors or persons, or their assigns.

And be it further enacted and ordained, that if any of the aforesaid creditors or persons, their heirs, executors, or administrators, or the assignee or assigns of them or any of them to whom any sum of money is due as aforesaid, shall become a purchaser or purchasers of any of the premises, that it shall and may be lawful for any or every of them to defalk or detain any money as shall be due to him or them as aforesaid, upon any or every purchase that he or they shall make of the premises or any part thereof, if the sum to him or them due as aforesaid, shall not exceed the value of the purchase, or so much thereof as the same shall amount unto, and the register-accountant is hereby authorized and required from time to time, and as often as need shall require, to ascertain and certify to the said treasurers the principal debt, and also the interest thereof, that at the time of payment for the purchase of any of the premises purchased by any of the aforesaid creditors, or persons, or the assignee or assigns of any of them, shall be due according to such rates, or considerations, of interest, as by this act is allowed, or otherwise is due and appointed to be paid by any other act or ordinance of parliament to any of the creditors or persons, their assignee or assigns of the several and respective sum and sums transferred, altered, and removed as aforesaid, whose certificate or certificates shall be a sufficient warrant for the said treasurers to allow the same upon any or every purchase or purchases that they or any of them shall make of the premises or any part thereof, and the said treasurers are hereby authorized and required to allow the same accordingly. Provided, that these several sums hereafter mentioned, viz. To Colonel Massey, with interest, nine hundred forty-four pounds six shillings and two-pence. To Colonel Birch, with interest, for Ireland, eight hundred fifty-seven pounds four shillings and eight-pence. To Merchant Adventurers Company, with interest, thirteen thousand eight hundred and four pounds. To Major-General Brown, with interest, five thousand pounds. To Ely and Crowland with interest, four thousand one hundred and thirty-eight pounds five shillings and six-pence. To Adam Eires, for northern officers, three thousand five hundred and twenty-six pounds and twelve shillings, formerly charged upon the excise, and now transferred upon the

the security of dean and chapters lands. As also the several sums hereafter mentioned, viz. to Major-General Massey assigned to Master Leithevillier, one thousand pounds : to Major-General Brown, four thousand and sixteen pounds : to Adam Eire, Thomas Greathead, &c. trustees for the use of certain reduced officers under the late Lord Fairfax, four thousand pounds : to the city of York, four thousand and fourscore pounds : to the county of Derby, two thousand four hundred and fifty pounds : to Sir Robert Harley, &c. the Committee of Hereford, six thousand seven hundred and forty pounds, whereof seven hundred and fifty pounds to Colonel Birch : to the Committee of Petitions, where Mr. John Goodwin has the chair, for the use of divers Scots officers with interest, five thousand seven hundred and six pounds, formerly charged on the grand receipt of Goldsmiths-Hall, and now transferred upon the security of dean and chapters lands as aforesaid, or any of them, shall not be allowed or taken by the trustees, register-accountant, or treasurers appointed by this act, in part of the purchase-money upon any purchase so to be made of the premises, by this present act appointed to be sold, or any part thereof, save only such of the said several sums, or such part thereof as the parliament or such committee as the parliament shall appoint for that purpose, shall first allow of and approve as just and fit to be so allowed.

And be it further enacted, that John Fowke, alderman of the city of London, shall be comptroller of all entries, receipts and payments which shall be made to or by the said treasurers, and shall have power and authority by himself or his sufficient deputies to keep account of all entries, receipts, payments, and discounts whatsoever, which shall be made unto or by the said treasurers, and the said comptroller and his deputies shall execute the said place of a comptroller in relation unto the said premises, according to such instructions and directions as are given to the comptroller for the receipts of bishops lands, by an ordinance of parliament of the sixteenth of November, one thousand six hundred and forty-six.

And be it further enacted and ordained, that the house in the Old Jewry, London, called Sir Richard Gurney's house, or some such other place as the said trustees shall think fitting, shall be the place where the said several and respective persons shall and may transact the said service, and put in execution this act. And be it lastly enacted and ordained, that the said trustees do forthwith cause this present act to be printed and published.

Provided also, and be it enacted and ordained, that no person or persons who have or has any debt transferred from either of the securities aforesaid, his or their assignee or assignees, being a purchaser within this act, shall have allowance of such debt by the trustees, register-accountant, or treasurers aforesaid, in part of the monies to be paid for the purchase of the premises, under the rate of fifteen years purchase of lands in possession, and for reversion in proportion thereunto, unless such person or persons, his or their assignee or assignees, shall first advance the like sum in ready money by way of doubling, in such sort as other persons by this act have liberty to do.

Provided also, and it is further enacted and declared, that the respective purchasers of the manors and lordships of the late dean and chapters, their heirs and assigns, and respective purchasers of the manors and lordships of the late archbishops and bishops, their heirs and assigns, shall be, and are hereby made, constituted and adjudged lawful patrons of the respective advowsons and benefices, with cure, within any of the manors and lordships so by them purchased, or which shall hereafter be purchased, in as ample manner to all intents and purposes, as the said deans and chapters, and the said archbishops and bishops respectively at any time were since the third of November, in the year of our Lord, one thousand six hundred and forty, until the parliament shall take further order.

Patronage of
advowsons and
benefices.

Provided, that for the countenancing and advancing of the profession of reformed religion, the Commons of England in Parliament assembled do enact, and ordain, that the French congregation in and about the city of London, shall have and enjoy the chapel formerly called Saint Anthony's Hospital, in Threadneedle-street, and now commonly called the French church in London,

1649.

to meet in for religious worship. And be it further enacted, that the trustees named in this act, their heirs and assigns, shall stand and be seised of the reversion of a house adjoining to the said chapel, now in the possession of one Master Swaine, his assignee, or assignees, to the use of such person or persons as from time to time shall be minister or ministers of the said congregation, and no longer; and such minister or ministers shall have, hold and enjoy the same as aforesaid and not otherways, and that the deacons of the said French congregation for the time being, shall have and receive for the use of the poor belonging to the said congregation, all the rent and rents now issuing out of the premises.

Provided also, that the house wherein Doctor Steward late prebend of Westminster lived, and adjoining to the abbey of Westminster, with the appurtenances thereof, shall be, and hereby is settled and vested in the trustees herein named, and in the survivors of them, and in the heirs and assigns of the survivor of them for ever, for the use of the serjeant at arms attending the parliament for the time being, to be held and enjoyed by him as incident to his office, in as ample manner as the deans and chapter of Westminster, their assigns or under-tenants heretofore have, or lawfully might have enjoyed the same.

Provided, that this act, or any thing therein contained, shall not extend to the dwelling-houses and gardens settled by the committee appointed by ordinance of parliament for the college of Westminster, upon the two ministers that preach on the Lord's days in the abbey church there.

Passed 30th April, 1649; v. 31st July, 1649; and 16th October, 1650.

Anno 1649. c. 31. [Scob. p. 2. 40.]

Maintenance for Preaching Ministers, and other Pious Uses.

All tithes appropriate, oblations, portions of tithes, &c. belonging to archbishops, bishops, deans, deans and chapters, and others of the hierarchy vested in trustees.

WHEREAS it has been found by long experience, that the government of the church of England by archbishops, bishops, their chancellors and commissaries, deans, deans and chapters, archdeacons, and other their officers depending on that hierarchy, has been a great impediment to the perfect reformation and growth of religion, and very prejudicial to the civil state and government of the commonwealth, and therefore has been by authority of parliament abolished and taken away, and all their manors, lands, tenements and hereditaments appointed to be sold for the payment of the just debts of the commonwealth, and other necessary charges occasioned by the late civil war, promoted mainly by, and in favour of the said hierarchy; saving and excepting all tithes appropriate, oblations, obventions, portions of tithes appropriate, of or belonging to the said archbishops, bishops, deans, deans and chapters, and others of the said hierarchy, and to all and every of them; all which, together with twenty thousand pounds yearly rent belonging to the late king and crown of England, hereafter mentioned, the Commons assembled in Parliament, have thought fit to be reserved and settled for a competent maintenance of preaching ministers, in such cities, towns and places, where it is wanting throughout England and Wales: be it therefore enacted, and it is enacted and ordained by this present parliament, and by the authority thereof, that all tithes appropriate, oblations, obventions, pensions, portions of tithes appropriate, offerings, fee-farm rents, issuing out of tithes of the said archbishops and bishops, the said deans, deans and chapters, and others of the said hierarchy, with all and every their appurtenances, of what nature and quality soever they be, which at any time within ten years before the beginning of this present parliament were belonging to them, or any of them, which they, or any of them had, held, and enjoyed in the right of his or their archbishoprics, or bishoprics, deaneries, dignities, offices, and functions or places respectively, together with all charters, deeds, books, accounts, rolls, and other writings and evidences whatsoever, concerning the premises, or any of them belonging thereunto, shall from and after the sixth day of January, which shall be in the year 1649, be vested and settled, adjudged and deemed to be, and are hereby in the real and actual possession and

and seisin of Sir Henry Holcroft, knight, Sir John Thorowgood of Kensington, knight, William Steel and John Coke, esquires, Francis West, esquire, lieutenant of the Tower, Henry Danvers, John Brown, and George Cooper, esquires, Mr. Richard Read, Mr. Richard Yong, William Skinner, and Nicholas Marten, esquires, and Mr. John Pocoke, their heirs and assigns: and they the said Sir Henry Holcroft, Sir John Thorowgood, William Steel, John Coke, Francis West, lieutenant of the Tower, Henry Danvers, John Brown, George Cooper, Mr. Richard Read, Mr. Richard Yong, William Skinner, Nicholas Marten, and John Pocoke, and the survivors, and survivor of them, and their heirs and assigns, shall have, hold, possess and enjoy, all the said premises to them, their heirs and assigns, without any entry or other act whatsoever, and for themselves, their lessees, farmers and tenants, discharged and acquitted of all titles, troubles and incumbrances, as freely, and in as large, ample and beneficial manner, to all intents and purposes, as any of the persons or corporations whose offices or places by any ordinance or act of this present parliament, are taken away and abolished, did hold or enjoy, or of right ought to have held or enjoyed, at any time by the space of ten years before the beginning of this parliament, or at any time since, any order or ordinance, act or acts of parliament to the contrary in anywise notwithstanding.

And whereas by act of parliament, made the six-and twentieth year of the reign of the late King Henry the Eighth, concerning first fruits of all ecclesiastical dignities and livings, payable to the crown; and also concerning one yearly rent of pension, amounting to the value of the tenth part of all the revenues, rents, tithes and other profits, as well spiritual as temporal, belonging to any archbishopric, bishopric, abbacy, monastery, priory, archdeaconry, deaconry, cathedral and collegiate church, parsonage, vicarage, chantry, or other benefice or promotion spiritual, in England and Wales, payable yearly to the King and his successors; which said act of parliament is revived and continued by another act of parliament made *primo Elizabethæ*, for restitution of first fruits and tenths to the crown, with some alterations and additions; and also repealing other acts of parliament touching the said first fruits and tenths; and by the said statute uniting and annexing the same to the crown imperial of the kingdom of England for ever; which office of kingship is abolished by an act of this present parliament: be it therefore ordained, and it is hereby ordained and enacted by the authority aforesaid, that all the said first fruits and tenths, as well spiritual as temporal, payable or intended to be paid, by virtue of the said acts of parliament of *tricesimo sexto Henrici VIII.* and *primo Elizabethæ*, or either of them, or by virtue of any other act of parliament made since that time, concerning first fruits and tenths, payable unto any Kings or Queens of England, other than such first fruits and tenths as are chargeable upon, or issuing out of any lands or possessions heretofore belonging to any archbishops, bishops, deans, deans and chapters, or other persons depending on that hierarchy, whose offices and titles by any act or ordinance of this present parliament are abolished and taken away, shall be, and are hereby vested and settled, adjudged and deemed to be, and are hereby in the very real and actual possession and seisin of Sir Henry Holcroft, and the rest of the abovenamed trustees, their heirs and assigns, and they the said trustees, and the survivors and survivor of them, and their heirs and assigns, shall have, hold, possess and enjoy all the said first fruits and tenths (except before excepted) with their appurtenances, to them, their heirs and assigns, as freely, and in as large, ample and beneficial manner, to all intents and purposes, as the late King at any time during his reign held and enjoyed the same, any act or acts of parliament to the contrary in anywise notwithstanding.

Nevertheless, in trust and confidence, and to the intent and purpose that they the said Sir Henry Holcroft, Sir John Thorowgood, William Steel, John Coke, Francis West, lieutenant of the Tower, Henry Danvers, John Brown, George Cooper, Mr. Richard Read, Mr. Richard Yong, William Skinner, Nicholas Marten, and Mr. John Pocoke, or any five or more of them, and the survivors and survivor of them, his and their heirs and assigns, shall in the first place satisfy or pay yearly, all such salaries, stipends, allowances and provisions, as have been limited or ap-

All the aforesaid tithes, first fruits and tenths, to be applied to the use of preaching ministers, maintenance of masterships of colleges, &c.

1649.

pointed for preaching the gospel, preaching ministers, or schoolmasters or others in England or Wales, settled or confirmed by ordinance or order of parliament; and afterwards such provisions, settlements, yearly allowances and augmentations, as have been made or confirmed by authority derived from this parliament, for preaching ministers or schoolmasters, for so long time, and in such manner as in and by the authority of parliament is limited, ordered and appointed; or until the parliament shall otherwise order, direct and appoint the same, any act or acts, or ordinance of parliament to the contrary in anywise notwithstanding: for which purposes the sum of eighteen thousand pounds *per annum*, of the said twenty thousand pounds, shall be disposed of and employed in lieu of such augmentation or maintenance as hath been by authority of parliament settled or given to, or for the maintenance of them out of the lands of the deans and chapters, until the sum of eighteen thousand pounds *per annum*, be raised out of the improvements of the tithes and impropriations belonging to the said deans and chapters, or by such other ways or means as shall be hereafter appointed and directed by authority of parliament; and also that two thousand pounds *per annum* of the said twenty thousand pounds, shall be disposed, employed and paid for increase of the maintenance of the masterships of colleges in both universities of this nation, where maintenance is not sufficient. And the said trustees, or any five or more of them, the survivors and survivor of them, their heirs and assigns, shall dispose of all and singular the aforesaid tithes, first-fruits and tenths, and of every part and parcel thereof, with their appurtenances, and of the revenues, rents, issues and profits thereof, to the uses, intents and purposes before expressed; and also for the maintenance of preaching ministers throughout England and Wales, in such places where such maintenance is wanting, in such manner and form, and to such persons, and for such other good uses, to the advancement of true religion, and the maintenance of piety and learning, as by this or any other act or acts of parliament, now or hereafter to be made, shall be set down and declared, and not otherwise, nor to any other intent, use or purpose whatsoever, nor to grant any lease or estate of any the said tithes, and other the premises, or any part thereof, for above six years in possession and in being, reserving thereupon a yearly rent to the full value thereof; and that all leases, gifts, grants, conveyances, assurances and estates whatsoever, hereafter to be made by the said trustees, the survivors and survivor of them, or the greater part of them, his and their heirs and assigns, other than as aforesaid, shall be utterly void and of none effect, to all intents, constructions and purposes, any thing in this act to the contrary in anywise notwithstanding.

Process out of the Exchequer against persons refusing to pay tithes and first-fruits.

And be it further enacted, that the several and respective receivers of the revenue of this commonwealth, for the respective counties in England and Wales, shall be, and are hereby required and authorized to receive the said first-fruits and tenths, as well temporal as ecclesiastic, and the same from time to time to pay in to the Exchequer; and if any person or persons shall refuse or neglect to pay in his and their first-fruits and tenths, as usually they have done, that then the barons of the Exchequer are hereby enabled and authorized to issue out the like process, and to proceed in like manner against such persons, as in like cases they do against others.

And be it further enacted and declared, that the committee of the revenue, and such other person or persons who have, or shall have the issuing out of such monies as shall be paid in to the Exchequer, are hereby required and enjoined from time to time to issue out and pay the said first-fruits and tenths, to such person or persons as the said trustees, or any five or more of them shall authorize to receive the same, and not to any other use, person or persons whatsoever.

Provided always, and it is hereby enacted, that if it shall so fall out, that all the said first-fruits and tenths, spiritual and temporal, settled and vested by this present act as aforesaid, shall not be sufficient to make up the full sum of twenty thousand pounds *per annum*, to be issued out yearly for the uses and purposes before mentioned, that then some other part of the yearly revenue, payable in to the Exchequer, shall be provided, set out and charged yearly to supply

supply the defects and want thereof; saving unto all and every person and persons, their heirs, executors and administrators, bodies politic and corporate, and their successors, other than the persons and corporations, and every one of them, whose office or offices, dignity, place or places, by any act or ordinance of this parliament are abolished or taken away, his or their heirs and successors, all such right, title, interest, possession, claim, demand, annuities, fees, offices, rents and other profits, which they or any of them lawfully have, or of right ought to have, or might have had, of, in or to any the tithes, impropriations, rents and premises, or of, in or to any part or parcel thereof, in such like manner, form and condition, to all intents and purposes, as if this act had never been had nor made.

Provided always, that after the expiration of the several and respective leases of any of the impropriations, tithes appropriated, portions of tithes appropriated, of or belonging to the late archbishops or bishops, deans, deans and chapters, and other officers depending upon the said hierarchy, such quantities and proportions of the said tithes, as shall and will, together with the present tithes the incumbent in such church or chapel receives (from which the said tithes were or are appropriated) make the maintenance of the incumbent in such church or chapel, one hundred pounds by the year; and also the tithes appropriate of lesser value, though they be not sufficient to make the like maintenance for the minister as aforesaid, shall be after the expiration of the respective leases, and are, by the authority of this present parliament, united and annexed to the said respective churches and chapels, for the maintenance of a godly and orthodox minister in them respectively; and where the impropriate tithes of the said archbishops and bishops, hereby annexed to the respective churches, shall not be sufficient to make up the maintenance of the minister there, one hundred pounds by the year, such quantity and proportion of the surplusage, and overplus of the appropriate tithes or pensions of the late bishops, or rents that shall be reserved upon the same, shall be disposed and paid by the said trustees, or any five of them, for the making up of the maintenance of the minister in such church or chapel one hundred pounds *per annum*, any thing in this present act to the contrary in anywise notwithstanding.

Such proportions of tithes appropriate to be applied to the maintenance of incumbents, as together with their present tithes will make 100*l. per annum.*

And to the intent and purpose that speedy care and course may be taken for providing of a competent maintenance for supply and encouragement of preaching ministers in the several parishes in England and Wales, be it likewise ordained and enacted, that the lords commissioners of the great seal of England for the time being, shall by virtue of this act, have full power and authority, and are hereby authorized and required, to award and issue forth several commissions under the said great seal, into all and every the counties and cities in England and Wales, to be directed unto such and so many persons, as by the parliament now assembled shall be nominated, assigned and appointed; thereby authorizing and requiring them, or any five or more of them, and giving them full power and authority, by the oaths of good and lawful men, as by all other good ways and lawful means, to inquire and find out the true yearly value of all parsonages and vicarages presentative, and of all other spiritual and ecclesiastical benefices and livings, unto which any cure of souls is annexed, lying and being within such counties and cities; and of all such particularly to inquire, and certify unto the court of chancery, what each of them are worth truly and really by the year, and the names of the present incumbents, proprietors and possessors thereof, and of such person and persons as receive the profits, and to whose use, and who supplies the cure, and what he has for his salary, and how many chapels are belonging to parish churches, and how situate and fit to be united within the limits of such counties and cities within which they are directed and authorized to inquire; and how the several churches and chapels are supplied by preaching ministers, that so course may be taken for providing both for preaching and for maintenance, where the same shall be found to be needful and necessary.

Commissions to be appointed for ascertaining the yearly value of ecclesiastical benefices and certifying the same into chancery.

And it is hereby further enacted, that the said trustees, the survivors and survivor of them, or the greater part of them, his and their heirs and assigns, shall have power, and are hereby authorized to name and appoint such collectors, receivers,

1649.

receivers, treasurers, and other officers as they shall think fit and convenient; for collecting, levying, and receiving of all or any of the said monies, as also for issuing out of the same for the purposes aforesaid, by warrant under the hands of the said trustees, their heirs or assigns, or any three or more of them, in such manner as they shall think fit and appoint; and to call to an account from time to time upon oath, all such collectors, treasurers, and other persons who shall receive any the rents, monies, and profits before-mentioned, and to give such fitting and reasonable allowance for the same, by yearly stipend respectively, or otherwise, as the said trustees, or the greater part of them shall think fit, and so order and appoint in writing under their hands.

Provided also, that this act, or any thing therein contained, do not at all extend to annul or make void an act of this present parliament (intituled, "An Act for the Settling of the Rectory or Parsonage-house of Burford, in the County of Oxon, and some of the Glebe Land, on William Lenthal, Esq. now Speaker, and his Heirs") or any thing therein contained, but that the same shall, and may remain to the said William Lenthal, his heirs and assigns for ever accordingly, any thing in this present act contained to the contrary in anywise notwithstanding.

Passed 8th Junii. *Vide* 5th April, 1650. 16th Oct. 1650.

Anno 1649. c. 46. [Scob. p. 2. 68.]

Further Powers for Sale of Deans and Chapters Lands.

BE it enacted by this present parliament, and by the authority of the same, that all and every person and persons, who by an act of this parliament (intituled, "An Act of the Commons of England in Parliament assembled, for the Abolishing of Deans, Deans and Chapters, Canons, Prebends, and other Offices and Titles, of or belonging to any Cathedral or collegiate Church or Chapel, within England or Wales") are not disabled to hold or use the place, function, office, title or style of precentor, or any other title, style, place, function or office, of or belonging to any cathedral or collegiate church or chapel within England or Wales, the town of Berwick upon Tweed, and isles of Guernsey and Jersey, or any of them, are and be from the nine-and-twentieth day of March, in the year of our Lord one thousand six hundred and forty-nine, disabled to hold the same or any such place, function, office or style as aforesaid; and that all manors, lands, tenements, rectories, parsonages, vicarages, advowsons, donations, nominations, rights of patronage and presentation, tithes, parks, commons, annuities, rents, reversions, services, courts-leet, courts-baron, and other courts, franchises, liberties, privileges and immunities, rights of action and entry, conditions, and all other possessions and hereditaments, with their and every of their appurtenances, of what nature or quality soever they be, which now are, or at any time within ten years before the beginning of this present parliament, of right were belonging to every or any such precentor, or other person or persons aforesaid, and which they or any of them had held or enjoyed in right, or by reason of his or their said place, function, office, title, style or employment respectively, together with all charters, deeds, court rolls, accounts, evidences and writings belonging to them or any of them which concern the same premises, or any of them, shall be, and are hereby vested and settled, and are hereby adjudged to be, and shall be deemed and taken to be in the real and actual possession and seisin of Sir John Wollaston, knight, Thomas Noel, William Hobson, Thomas Arnold, Owen Roe, Stephen Estwick, Robert Titchborn, George Langham, John Stone, Mark Mildesley, John White, William Wyberd, Daniel Taylor, William Rolph, and Rowland Wilson, esqrs. (trustees in the said recited act named) their heirs and assigns, and that they the said trustees, and the survivor and survivors of them, and his and their heirs and assigns, shall from henceforth hold such of the premises (hereby settled and vested in them) and such of the manors, lands, tenements and hereditaments by the said recited act vested in the said trustees and their heirs, as on the eight-and-twentieth day of March last past were holden of any common

Officers of cathedrals disabled.

All their manors, lands, parsonages, vicarages, tithes, &c. vested in trustees.

1649.

common person or persons by the same tenures, rents and services by which the same were then held, and shall from henceforth hold all the rest of the said manors and premises, as well those which are hereby, as those which by the said recited act are vested or settled in the said trustees and their heirs, of the manor of East Greenwich, in fee and common socage, by fealty only, and not by any other tenure or service whatsoever; and that they the said trustees, and the survivor and survivors of them, and his and their heirs, shall from henceforth stand seised of all the said manors, lands, tenements, hereditaments, and other things hereby, or by the said recited act, vested in them and their heirs as aforesaid (except rectories, parsonages, vicarages, and such other things as in the said act are excepted) to the uses, intents and purposes herein and hereafter declared, and not upon any other trust, nor to any other use, intent or purpose whatsoever, (that is to say) that out of the money which shall be raised by sale of such of the premises as shall be sold, and out of the rents, revenues, issues and profits of the premises, which shall grow due before such sale, the several sums of monies, which hereby, or by the said act are, or are intended to be paid and satisfied, together with all charges to be paid or borne, for or by reason of the execution of the trust in them reposed (and not otherwise provided for) may be paid and satisfied; and after the same shall be paid and satisfied, they and the survivor and survivors of them, his and their heirs shall stand seised of the residue of the premises then remaining undisposed of, for the use and benefit of the commonwealth, as by the parliament shall be appointed.

Certain rectories, parsonages, vicarages, &c. excepted.

And it is hereby further enacted in all things (not hereby otherwise directed) which concern the premises hereby vested or settled in the said trustees and their heirs, and the rents, issues and profits thereof, or which have reference thereunto, as in and by the said recited act, and such other acts and instructions as have been since that made or given, it is enacted concerning the manors, lands, tenements, hereditaments, and other things by the said first recited act vested or settled in the said trustees and their heirs, and the rents, issues and profits thereof, or any other thing in reference thereunto; and that the said trustees, contractors, treasurers and register respectively, and all purchasers and others whom it doth or shall concern, shall have the like powers, privileges and authorities in all things, and are hereby authorized and empowered to have and do all such and the like acts and things in reference to the premises hereby vested or settled in the said trustees and their heirs, and the rents, issues and profits thereof, in the like sort as they have or may do by force of the said other acts and instructions in reference to the premises, by the said first recited act vested or settled in the said trustees and their heirs, and the rents, issues and profits thereof.

And it is further enacted by the authority aforesaid, that such of the contractors named in the said first recited act, who on or before the first day of December, one thousand six hundred and forty-one, in his or their own right had, and now hath, or which before or since that, as executor or administrator to any other, had and now hath, any legal term in any of the premises hereby, or by the said first recited act vested in the said trustees and their heirs, may purchase the reversion and inheritance thereof, without incurring any of the forfeitures expressed in the said act; and shall have and enjoy such and the like benefit, discharges, liberties and advantages in reference thereunto, as any other purchaser of any of the premises may or ought to have or enjoy, any thing in the said first recited act to the contrary notwithstanding. Provided in the cases aforesaid, that the committee of obstructions, or any five or more of them, shall make the contract according to the rules and values in the first recited act mentioned: and provided also, that no contractor do procure himself to be an executor or administrator by fraud or covin, thereby to obtain an interest of a reversion or reversions to become a purchaser.

And it is hereby further enacted, that the said trustees, contractors, treasurers, and registers, named in the said first recited act, and all other persons, bodies politic and corporate, and every of them, shall in reference to the premises hereby, or by the same first recited act vested or settled in the said trustees

1649.

tees and their heirs, and in all things touching the same, observe and pursue, and have the benefit of these instructions following; (viz.)

Instructions for the Trustees.

THAT the times formerly limited, and now near elapsed, for bringing in of the monies to be doubled upon the credit of the deans and chapters' lands, shall be enlarged, and have continuance unto the last day of August, one thousand six hundred and forty-nine, for all those who live in London, or within twenty miles distant from the same, and unto the last day of September following, for all others of this nation, or resiant therein.

That all persons, bodies politic and corporate, whose monies advanced for the purchase of the rebels' lands in Ireland, are admitted to be doubled upon the credit of the said deans and chapters lands, who have or shall within the time hereby before-limited, double the same, and bring in their monies, shall have allowance for the same after the rate of eight pounds *per centum per annum*, from the time of their first advance thereof, and shall have their bills cast up accordingly.

That the receipt or certificate of the high sheriffs of the several counties and cities, who by the act for the speedy reducing of the rebels in Ireland were authorized to receive monies advanced in their respective counties, for purchase of the said rebels lands, and to give receipts for the same; as likewise the receipt or certificate of the treasurers at Grocers-hall, London, for monies advanced and paid into their treasury, upon the purchase of the said rebels lands, or any two of them, shall be a warrant to the said trustees to admit to double upon, in like manner as the receipts or certificates of the treasurers of those monies at Guildhall, or the survivor of them, are directed or intended to be.

That all such merchant-strangers, mariners, and others, who advanced monies for the relief and preservation of Ireland, and paid the same in to the chamber of London, in the year one thousand six hundred and forty-two, and their assigns bringing unto the said trustees a receipt or certificate for the same under the hand of the chamberlain of London, or his deputy for the time being, shall be and hereby is admitted to double the same, with interest thereof, upon the credit of the said deans and chapters lands, and shall have such allowances of interest, and the like privileges and advantages as any others admitted to double have or ought to have.

That all such persons who raised or furnished any horse, with or without furniture, for the preservation of the city of London, which were listed and valued by Commissary Thomas Walker, and afterwards sent out into the public service, and there continued or lost, and not returned to the owners, shall by themselves or their assigns, upon producing to the said trustees, a certificate thereof under the hand of the colonel or major of the regiment, or captain or other chief officer of the troop wherein the said horses were abroad in the public service, be admitted to double the monies at which the said horses and furniture were valued by the said commissary, as monies owing upon the public faith, upon the credit of the said deans and chapters lands, and shall have such allowances, privileges and advantages as other persons admitted to doubling have.

That the register or his deputy, or any of his clerks, shall not make forth any particular upon any survey, but upon such only as shall be first allowed and signed by the surveyor general: according to which surveys so allowed and signed, particulars shall be made, and not otherwise.

That the contractors or any of them shall not make any contract upon any particular, but such only as shall be first signed by the register, or his sworn deputy; and every particular so made and signed shall be a good and sufficient warrant to the contractors, or any five or more of them, to contract upon, for the sale of all or any of the lands, tenements, hereditaments and other things therein comprised.

That the contractors or any five or more of them, after any such contract made upon any such particular rated and signed by the register or his sworn deputy,

deputy, shall thereupon by writing under their hands, to be subscribed under such particular, attest that contract, and make request, and give warrant to the trustees, or any five or more of them, to draw up and seal conveyances thereupon to the purchasers; whereupon the register or his deputy (having first entered the same, and all proceedings thereon) shall deliver the same to the trustees, or any five or more of them, who are hereby authorized to make and seal conveyances accordingly.

That the said trustees, or any five or more of them, shall from time to time, by writing or writings under their hands and seals, nominate and appoint such and so many receivers as they shall think fit, to receive the rents, issues and profits of the premises, which by this or the said first recited act, are vested or settled in the said trustees and their heirs; and from time to time when and as oft as they shall think fit, remove them or any of them, and nominate and appoint others in their stead and place; and shall take of every such receiver, such security as they shall think fit, for payment into the treasury, of so much as from time to time shall be received by every of those receivers respectively. And the said trustees, or any five or more of them, are hereby authorized to make and give such allowances to every such receiver for his service therein, as shall be allowed of, with the approbation of the committee of obstructions, or any five or more of them, and for payment thereof, and of such fees and allowances as the said trustees, or any five or more of them, by the first recited act, are authorized to give or make, the said trustees, or any five or more of them, are hereby authorized from time to time to make warrants under their hands to the treasurers, or any two of them, who are hereby required and authorized, out of the monies which shall be paid into the treasury, to pay the same accordingly: And that the said trustees, contractors, treasurers and register, and every of them respectively, and all others whom it may concern, in relation to the premises, which by this, or by the said first recited act, are vested or settled in the said trustees or their heirs, shall have the like powers and authorities, and are in all things not hereby, or by the said first recited act, or such other acts or instructions as have been since that made, otherwise directed to proceed in like sort, and to observe the like rules and instructions as the trustees, contractors, treasurers, register, or other persons for or concerning the late bishops' lands, have or may, or might by force or virtue of any ordinance of parliament to have, do or observe in relation to those lands.

Passed 31st July.

Anno 1650. c. 5. [Scob. p. 2. 111.]

1650.

Further Provision for Ministers and other pious Uses.

WHEREAS by an ordinance of parliament of the ninth of October, one thousand six hundred forty and six, intituled, "An Ordinance of this present Parliament, for the Abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for Settling of their Lands and Possessions upon Trustees, for the Use of the Commonwealth," the parsonages appropriate, tithes, oblations, obventions, pensions, portions of tithes, parsonages, vicarages, churches, chapels, and donatives in the said ordinance mentioned, are among other things in the said ordinance likewise mentioned, vested and settled in the trustees in the said ordinance named, their heirs and assigns, nevertheless subject to such trust and confidence as the parliament should appoint and declare.

And whereas by an act of this present parliament, intituled "An Act of the Commons of England in Parliament assembled, for the Abolishing of Deans, Deans and Chapters, Canons, Prebends, and other Officers and Titles belonging to any Cathedral or Collegiate Church or Chapel within England and Wales," all the parsonages appropriate, tithes, oblations, obventions, pensions, portions of tithes, parsonages, rectories, vicarages, churches, chapels, and donatives in the said act mentioned, are among other things in the said act likewise mentioned, vested and settled in and upon the trustees named in the said act, their heirs and assigns, upon such trust and confidence as in the said act is contained.

And

1649.

tees and their heirs, and in all things touching the same, observe and pursue, and have the benefit of these instructions following; (viz.)

Instructions for the Trustees.

THAT the times formerly limited, and now near elapsed, for bringing in of the monies to be doubled upon the credit of the deans and chapters' lands, shall be enlarged, and have continuance unto the last day of August, one thousand six hundred and forty-nine, for all those who live in London, or within twenty miles distant from the same, and unto the last day of September following, for all others of this nation, or resiant therein.

That all persons, bodies politic and corporate, whose monies advanced for the purchase of the rebels' lands in Ireland, are admitted to be doubled upon the credit of the said deans and chapters lands, who have or shall within the time hereby before-limited, double the same, and bring in their monies, shall have allowance for the same after the rate of eight pounds *per centum per annum*, from the time of their first advance thereof, and shall have their bills cast up accordingly.

That the receipt or certificate of the high sheriffs of the several counties and cities, who by the act for the speedy reducing of the rebels in Ireland were authorized to receive monies advanced in their respective counties, for purchase of the said rebels lands, and to give receipts for the same; as likewise the receipt or certificate of the treasurers at Grocers-hall, London, for monies advanced and paid into their treasury, upon the purchase of the said rebels lands, or any two of them, shall be a warrant to the said trustees to admit to double upon, in like manner as the receipts or certificates of the treasurers of those monies at Guildhall, or the survivor of them, are directed or intended to be.

That all such merchant-strangers, mariners, and others, who advanced monies for the relief and preservation of Ireland, and paid the same in to the chamber of London, in the year one thousand six hundred and forty-two, and their assigns bringing unto the said trustees a receipt or certificate for the same under the hand of the chamberlain of London, or his deputy for the time being, shall be and hereby is admitted to double the same, with interest thereof, upon the credit of the said deans and chapters lands, and shall have such allowances of interest, and the like privileges and advantages as any others admitted to double have or ought to have.

That all such persons who raised or furnished any horse, with or without furniture, for the preservation of the city of London, which were listed and valued by Commissary Thomas Walker, and afterwards sent out into the public service, and there continued or lost, and not returned to the owners, shall by themselves or their assigns, upon producing to the said trustees, a certificate thereof under the hand of the colonel or major of the regiment, or captain or other chief officer of the troop wherein the said horses were abroad in the public service, be admitted to double the monies at which the said horses and furniture were valued by the said commissary, as monies owing upon the public faith, upon the credit of the said deans and chapters lands, and shall have such allowances, privileges and advantages as other persons admitted to doubling have.

That the register or his deputy, or any of his clerks, shall not make forth any particular upon any survey, but upon such only as shall be first allowed and signed by the surveyor general: according to which surveys so allowed and signed, particulars shall be made, and not otherwise.

That the contractors or any of them shall not make any contract upon any particular, but such only as shall be first signed by the register, or his sworn deputy; and every particular so made and signed shall be a good and sufficient warrant to the contractors, or any five or more of them, to contract upon, for the sale of all or any of the lands, tenements, hereditaments and other things therein comprised.

That the contractors or any five or more of them, after any such contract made upon any such particular rated and signed by the register or his sworn deputy,

deputy, shall thereupon by writing under their hands, to be subscribed under such particular, attest that contract, and make request, and give warrant to the trustees, or any five or more of them, to draw up and seal conveyances thereupon to the purchasers; whereupon the register or his deputy (having first entered the same, and all proceedings thereon) shall deliver the same to the trustees, or any five or more of them, who are hereby authorized to make and seal conveyances accordingly.

That the said trustees, or any five or more of them, shall from time to time, by writing or writings under their hands and seals, nominate and appoint such and so many receivers as they shall think fit, to receive the rents, issues and profits of the premises, which by this or the said first recited act, are vested or settled in the said trustees and their heirs; and from time to time when and as oft as they shall think fit, remove them or any of them, and nominate and appoint others in their stead and place; and shall take of every such receiver, such security as they shall think fit, for payment into the treasury, of so much as from time to time shall be received by every of those receivers respectively. And the said trustees, or any five or more of them, are hereby authorized to make and give such allowances to every such receiver for his service therein, as shall be allowed of, with the approbation of the committee of obstructions, or any five or more of them, and for payment thereof, and of such fees and allowances as the said trustees, or any five or more of them, by the first recited act, are authorized to give or make, the said trustees, or any five or more of them, are hereby authorized from time to time to make warrants under their hands to the treasurers, or any two of them, who are hereby required and authorized, out of the monies which shall be paid into the treasury, to pay the same accordingly: And that the said trustees, contractors, treasurers and register, and every of them respectively, and all others whom it may concern, in relation to the premises, which by this, or by the said first recited act, are vested or settled in the said trustees or their heirs, shall have the like powers and authorities, and are in all things not hereby, or by the said first recited act, or such other acts or instructions as have been since that made, otherwise directed to proceed in like sort, and to observe the like rules and instructions as the trustees, contractors, treasurers, register, or other persons for or concerning the late bishops' lands, have or may, or might by force or virtue of any ordinance of parliament to have, do or observe in relation to those lands.

Passed 31st July.

Anno 1650. c. 5. [Scob. p. 2. 111.]

1650.

Further Provision for Ministers and other pious Uses.

WHEREAS by an ordinance of parliament of the ninth of October, one thousand six hundred forty and six, intituled, "An Ordinance of this present Parliament, for the Abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for Settling of their Lands and Possessions upon Trustees, for the Use of the Commonwealth," the parsonages appropriate, tithes, oblations, obventions, pensions, portions of tithes, parsonages, vicarages, churches, chapels, and donatives in the said ordinance mentioned, are among other things in the said ordinance likewise mentioned, vested and settled in the trustees in the said ordinance named, their heirs and assigns, nevertheless subject to such trust and confidence as the parliament should appoint and declare.

And whereas by an act of this present parliament, intituled "An Act of the Commons of England in Parliament assembled, for the Abolishing of Deans, Deans and Chapters, Canons, Prebends, and other Officers and Titles belonging to any Cathedral or Collegiate Church or Chapel within England and Wales," all the parsonages appropriate, tithes, oblations, obventions, pensions, portions of tithes, parsonages, rectories, vicarages, churches, chapels, and donatives in the said act mentioned, are among other things in the said act likewise mentioned, vested and settled in and upon the trustees named in the said act, their heirs and assigns, upon such trust and confidence as in the said act is contained.

And

1650.

Possession of
parsonages ap-
propriate, tithes,
&c.

And whereas by an act of this present parliament, intituled "An Act, with further Instructions to the Trustees, Contractors, Treasurers, and Register, for the Sale of the Lands and Possessions of the late Deans, Sub-Deans, Deans and Chapters, &c. and for the better and more speedy execution of the former Acts, Ordinances, and Instructions made concerning the same," all rectories, parsonages, vicarages, and tithes in the said act mentioned, are, amongst other things in the said act also mentioned, vested and settled in and upon the trustees in the said act named, their heirs and assigns, upon such trust and confidence as in the said act is contained.

And whereas, by an act of this present parliament, intituled "An Act for providing Maintenance for preaching Ministers, and other pious Uses," all tithes appropriate, oblations, obventions, pensions, portions of tithes appropriate, offerings, fee-farm rents issuing out of tithes in the said act mentioned, are settled and vested from and after the sixth day of January, in the year one thousand six hundred forty and nine, in and upon Sir Henry Holcroft, knight, and other the trustees in the said act named, in such manner and upon such trust and confidence as in the said act is contained: Now to the end that the aforesaid trustees in the said last recited act named, may proceed effectually to put in execution the trust in them reposed by the said act, and by this present act, and that a just and speedy distribution may be made of the premises, for the maintenance of a preaching ministry, and other the pious uses in this and the said former acts specified; Be it enacted, ordained, and declared by this present parliament, and by the authority thereof, that the trustees named in the aforesaid ordinance of the ninth of October, one thousand six hundred forty and six, and the trustees named in the aforesaid act for the abolishing of deans, deans and chapters, &c. and in the said act, with further instructions to the said trustees, contractors, treasurers and register, for the sale of the said lands and possessions of the said late deans, deans and chapters, &c. shall be, and are hereby, and by the authority of this present parliament, from the sixth of January, one thousand six hundred forty and nine, divested of the possession, seisin, fee and inheritance of all and every the said parsonages appropriate, tithes, oblations, obventions, pensions, portions of tithes appropriate, vicarages, churches, chapels, donatives, and fee-farm rents, issuing out of parsonages, vicarages, and tithes in the aforesaid ordinance and acts mentioned or contained, and hereby be and are discharged of all and every trust of and concerning the same: And that the said Sir Henry Holcroft, knight, Sir John Thorowgood, of Kensington, knight, William Steel, esquire, recorder of the city of London, John Cook, esquire, Francis West, esquire, lieutenant of the Tower, Henry Danvers, esquire, John Brown, esquire, George Cooper, esquire, Mr. Richard Read, Mr. Richard Yong, William Skinner, esquire, Nicholas Martin, esquire, and Mr. John Pocock, trustees named in the aforesaid act for providing maintenance for preaching ministers, &c. their heirs and assigns, and the survivors and survivor of them and their heirs, shall stand and be seised of all appropriations, tithes appropriate, donatives, oblations, obventions, pensions, portions of tithes, glebes appropriate, and fee-farm and other rents issuing out of parsonages, vicarage or tithes of or belonging to the said archbishops and bishops, or to any deans, sub-deans, deans and chapters, archdeacon, prior, chancellor, commissary, chanter, sub-chanter, treasurer, sub-treasurer, succenter, precenter, sacrist, prebend, canons, canons resident or non-resident, petty canons, vicars choral, choristers, old vicars and new, or any other officer or person of or belonging to the said hierarchy, with their and every of their rights, members and appurtenances, or which they or any of them had, held or enjoyed, or ought to have had, held, or enjoyed in right of his or their said dignity, office, function or employment, at any time by the space of ten years before the beginning of this present parliament, or at any time since the said former ordinance or acts, or any thing therein contained, or any other act or ordinance of parliament to the contrary notwithstanding: Nevertheless, upon trust and confidence, and to the end, intent, and purpose, that the said Sir Henry Holcroft, Sir John Thorowgood, William Steel, John Cook, Francis West, Henry Danvers, John Brown, George Cooper, Richard Read, Richard Yong, William Skinner, Nicholas Martin, and John Pocock,

1650.

Pocock, or any five or more of them, their heirs and assigns, and the survivors and survivor of them and their heirs, shall and do until the four-and-twentieth day of June, which shall be in the year one thousand six hundred and fifty, pay and supply out of the rents, issues, and profits that shall arise out of the premises for the maintenance of preaching ministers, the advancement of learning, and other pious uses in England and Wales, and the town of Berwick, such augmentations and allowances as have been made, settled, and confirmed by ordinance or order of parliament; and afterwards such allowances and augmentations as have been made or confirmed by authority derived from the parliament; and shall from and after the said four-and-twentieth day of June, one thousand six hundred and fifty, pay and satisfy such augmentations and allowances as shall be made, settled, or confirmed by the parliament, or authority derived from them, according to such directions and instructions as they shall from time to time have and receive from the parliament, or authority derived from them as aforesaid.

Allowances to
preaching mi-
nisters.

And be it further enacted and ordained, that the said Sir Henry Holcroft, and the rest of the aforesaid trustees, in whom the premises are hereby vested as aforesaid, or any five or more of them, shall and may, and are hereby enabled from time to time, to make lease or leases by deed indented of the premises, or any part thereof, which shall not exceed the term of six years from the day of the date of the said lease or leases in possession, and not in reversion or remainder; and reserving upon such lease and leases of the premises, a reasonable yearly rent and rents for the same; for which end the said trustees, or any five or more of them, are hereby authorized to nominate and appoint under their hands and seals, when they shall see cause, such person and persons as they or any five or more of them shall think meet, to be sub-commissioners in the respective counties of England and Wales, who shall and may, and are hereby authorized to contract for, set and let the premises, or any part thereof, for one or more years, not exceeding seven years in possession, according to such instructions as they shall from time to time receive in writing from the said trustees, or any five or more of them.

Leases.

And be it further enacted and ordained by the authority aforesaid, that all and every such lease, leases or grants, made of any of the premises by the said trustees, or any five or more of them, shall be good and effectual in law, to all intents and purposes; and that all and every lessee and tenant of the premises, or any part thereof, his executors, administrators, and assigns, shall have, hold, and enjoy the premises that shall be to him or them let and granted as aforesaid, discharged of all trusts and accounts whereunto the said trustees are or may be liable, by virtue of this or the aforesaid act for maintenance of ministers; and all suits and questions that may arise, or be moved, upon pretence of letting at under values, and all other claims and demands whatsoever, and of all incumbrances made by the said trustees, or by any claiming under them or any of them; and that the said premises shall not be liable unto, but stand, and shall be free and discharged of and from all manner of statutes, judgments, recognizances, dowers, jointures, and other acts and incumbrances whatsoever, had, made, done, or suffered, or to be had, made, done, or suffered, by, from, or under the said trustees, or any of them, other than such leases as shall be by them, or any five or more of them, made as aforesaid, according to the intent of this act.

Leases to be
good in law.

And to the end that two thousand pounds a-year given for the increase of the maintenance of the masters and heads of houses in the respective universities within this nation, by the said act, intituled, "An Act for providing Maintenance for preaching Ministers, and other pious Uses," be distributed according to the intent of the said act; be it enacted and ordained, that the said trustees, or any five or more of them, do and shall from time to time pay out the said two thousand pounds a-year for the ends aforesaid, according to such orders and proportions as they shall receive from the committee of parliament for regulating the said universities; in which the said committee are to have regard unto the number of houses of learning in each university, that are fit to have an increase of maintenance, and to make an assignment of maintenance

2000 l. per ann.
to the masters
and heads of
houses in the
Universities.

1650.

Margaret lecturer of Oxford.

Arrears of rent of parsonages appropriate, tithes, &c.

Surveys of appropriations and tithes to be transmitted to the trustees, and verified by the oaths of the registers and deputies.

maintenance unto them accordingly; provided it do not exceed one hundred pounds *per annum* to any one of them.

And be it further enacted, that the said trustees, or any five or more of them, and the survivors and survivor of them, do and shall pay unto the Margaret lecturer of Oxford, for the time being, out of the present rents, issues, and profits of the premises, vested in them the said trustees, fourscore pounds *per annum*, half yearly, for the maintenance of the divinity lecture, commonly called the Margaret Lecture, in lieu and satisfaction of a dividend the said lecturer had as prebend of the cathedral church of Worcester.

And be it further enacted and ordained, that the said trustees, or any five or more of them shall stand and be possessed of, and are hereby, and by authority of this present parliament authorized and appointed to collect, gather, and receive, levy and recover, or cause to be collected, gathered, received, levied and recovered, all arrears of all rents, sum and sums of money, and other profits whatsoever reserved, issuing or payable out of such of the aforesaid parsonages appropriate, tithes and premises which were vested in the trustees, mentioned in the aforesaid ordinance of the ninth of October, one thousand six hundred and forty-six, and became due since the first day of December, one thousand six hundred and forty-one, until the said ninth day of October, one thousand six hundred and forty-six, and out of all parsonages appropriate, tithes, or any other the premises vested in the trustees mentioned in the aforesaid act, for the abolishing of deans, deans and chapters, &c. and becoming due since the said first day of December, one thousand six hundred and forty-one, until the nine-and-twentieth day of March, one thousand six hundred and fifty, which are remaining in the hands of any tenant, possessor, or occupier of the said parsonages and premises, or of any treasurer, collector or receiver thereof, or of any other person or persons whatsoever, and not already particularly disposed of by the parliament, or authority derived from them; and that they the said trustees, or any five or more of them, shall and may by action, distress, information, or by any other lawful ways and means whatsoever, sue for, recover, and receive the said arrears, as if they were lawful and rightful owners thereof; and call to an account all treasurers, collectors, and receivers thereof, or of any part thereof, upon trust and confidence, and to the end, intent, and purpose, that they the said trustees, or any five or more of them, shall and may, and they are hereby appointed and required to dispose thereof, for and towards the relief, maintenance, and support of such late bishops, deans, prebendaries, singing men, choristers, and other members, officers, and persons destitute of maintenance, whose respective offices, places, and livelihoods are by the aforesaid ordinance or act, or any pursuant ordinance or act of parliament, taken away and abolished; distributing and apportioning the same, according to the wants and necessities of such persons, to whom the said disposition shall be made as aforesaid, and according to such further directions as they shall receive from the parliament, or authority derived from them.

And be it further enacted and ordained by the authority aforesaid, that the trustees appointed by the aforesaid ordinance for the sale of bishops lands, and the trustees appointed by the aforesaid acts for the sale of deans and chapters lands, &c. or any five or more of them respectively, or the respective registers appointed by any ordinance or act of parliament for the sale of the said lands respectively, or their deputies, do upon the order of any five or more of the said trustees in this act mentioned, deliver unto them the said trustees, or any five or more of them, all deeds, charters, evidences, and writings concerning the premises only; and the said registers and their deputies respectively shall transmit the particular surveys of the aforesaid appropriations, tithes, and premises, to them returned, or remaining with them respectively, or which shall be hereafter returned to them or any of them respectively, or true copies under the hands of the respective registers or their deputies, of such surveys as are or shall not be distinctly returned, and severed from the particulars of other the lauds and revenues by them the said trustees respectively sold or to be sold, unto the aforesaid trustees, in whom the aforesaid appropriations and premises are hereby vested, or any five or more of them; which surveys and copies respectively, shall

1650.

shall be delivered in upon the oaths of the said registers or their deputies respectively, to be the surveys which were returned, or true copies thereof; and which oath the said trustees, or any three or more of them, have hereby power to administer in such cases as they shall think fit.

And be it further enacted and ordained, that the said trustees, or any five or more of them, shall and may from time to time under their hands and seals, nominate and appoint, and place and displace such person and persons to be treasurers, receivers, and collectors of all rents, issues, and profits that shall arise out of any of the premises vested in them the said trustees by virtue of this or the aforesaid act, intituled, "An Act for providing Maintenance for preaching Ministers, and other pious Uses;" and also such other officers as they, or any five or more of them, shall think fit and necessary to carry on the said service, and to allow and pay unto the said respective treasurers, receivers, and other officers employed by them out of the profits and revenues in them vested, such fees and salaries as shall be allowed of by the parliament, or authority derived from them: and that they the said trustees, or any five or more of them, shall and may defray such incident charges and expenses as shall be necessary for the due execution of the premises, out of the said rents and revenues as aforesaid, and shall be allowed by the parliament, or authority derived from them.

Treasurers, receivers, and collectors.

And to the end that a just and true account of the premises may from time to time be given and kept, the said trustees, or any five or more of them, are hereby authorized, if they shall see cause, to call all treasurers, receivers, and collectors, and other persons employed by them for receiving the said rents, revenues, and premises hereby, or by the aforesaid act, for providing maintenance for preaching ministers, vested in them or any part thereof, to an account upon oath, which oath they the said trustees, or any three or more of them, are hereby enabled to administer; and the said parties accounts thereupon to examine and state, and upon clearing thereof, to give such person and persons a full discharge for the same: and if any treasurer, receiver, or collector of the said arrears and premises, or any part thereof, shall refuse to give an account to the said trustees, or any three or more of them, or shall refuse to pay unto them such monies as shall appear upon account, or otherwise to be in his or their hands, that then in both the said cases the said trustees, or any five or more of them, shall and may, under their hands and seals, certify the name or names of the person or persons so refusing as aforesaid, to the barons of the exchequer; which said certificate shall be a sufficient warrant for the said barons to issue out process; and the said barons are hereby thereupon required to issue out process, and proceed against such offenders, as they do against other receivers of the public revenue in the like cases.

Process out of the Exchequer against offenders.

And be it further enacted, that if any action or suit shall be brought or prosecuted against the present trustees, or any of them, or against any person or persons doing or performing any thing, by, from, or under them, for or by reason of any act or thing done in execution of this act, or the said act, intituled, "An Act for providing Maintenance for preaching Ministers, or other pious Uses;" or of any other act or instructions made, or hereafter to be made by authority of parliament, that they and every of them shall and may in such case plead the general issue, and give this or the aforesaid acts, or either of them, or any future act or instructions to be given by authority of parliament, in evidence; and if judgment pass against the parties complaining or prosecuting in any such action or suit, or that they be nonsuited, or suffer any discontinuance, that in every such case the parties defendants and prosecuted, shall have and recover double costs, to be awarded by the judge or judges of the court where such action or suit shall be depending.

And to the end that there may be a due and just distribution of the aforesaid rents and revenues for the maintenance of preaching ministers and other the pious uses hereby, and by the aforesaid act, intituled, "An Act for Maintenance of preaching Ministers, and other pious Uses," intended; be it further enacted and ordained, that the committee for regulating the universities of Oxford and Cambridge, shall be, and are hereby appointed a committee to receive

Committee for regulating the augmentations of preaching ministers.

1650.

Manors of rectories, glebe-lands, pastures, meadows, marshes, &c. vested in trustees.

Discharged from the payment of tithes as fully as the archbishops, bishops, deans and chapters, held the same at any time during the term of ten years before the beginning of the parliament.

and survivor of them and their heirs, stand seised of all appropriations, tithes appropriate, donatives, oblations, obventions, pensions, portions of tithes, glebes appropriate, and fee-farm, and other rents issuing out of parsonages, vicarages or tithes of or belonging to the said archbishops and bishops, or to any deans, sub-deans, deans and chapters, archdeacon, prior, chancellor, commissary, chanter, sub-chanter, treasurer, sub-treasurer, succenter, precenter, sacrist, prebend, canons, canons resident or non-resident, petty canons, vicars, chorals, choristers, old vicars and new, or any other officer or person of or belonging to the said hierarchy, with their and every of their rights, members and appurtenances, or which they or any of them had, held or enjoyed, or ought to have had, held, or enjoyed, in right of his or their said dignity, office, function or employment at any time by the space of ten years before the beginning of this present parliament, or at any time since.

And whereas since the passing of the said ordinance and acts of parliament, some doubts and questions have been made and risen, whether any manors of rectories, messuages, tenements, glebe lands, pastures, meadows, marshes, and fee-farm rents issuing out of manors or rectories, jointly or severally charged therewith, lately appertaining to any late archbishop, bishop, dean, dean and chapter, prebend, or any other person or persons, or bodies politic, formerly mentioned in the said ordinance or acts of parliament to be abolished, may be contracted for and conveyed by the contractors and trustees respectively, in the said ordinance and first recited act of parliament named: for the better avoiding of all scruples and questions that may arise by colour of the general words in the said ordinance and acts of parliament, the parliament does now enact and declare, and be it by authority of this present parliament enacted and declared, that all manors of rectories impropriate, messuages, tenements, glebe-lands, pastures, meadows, marshes, belonging to any rectory impropriate, and fee-farm rents, issuing out of manors in rectories impropriate, jointly or severally charged therewith, late belonging, or appertaining, or reputed and taken to be belonging or appertaining to any rectory impropriate, parsonage, church, chapel, or donative, lately appertaining or belonging, or reputed and taken to be belonging or appertaining to any late archbishop, bishop, dean, dean and chapter, prebend, or other person or persons, or bodies politic, mentioned in the said ordinance and acts of parliament to be abolished, in right of his or their said office or function, shall be, and are hereby settled in the full seisin and possession of the respective trustees in the said recited ordinance and first recited act of parliament, their heirs and assigns, and not in the seisin or possession of the said Sir Henry Holcroft, and the other trustees, their heirs or assigns in the said last recited act of parliament mentioned, nor subject to the trusts and uses in the said last recited act mentioned: and the respective trustees in the said ordinance and first recited act named, their heirs and assigns, shall be, and by authority of this present parliament are declared to be in the full seisin and possession of the said manors of rectories, messuages, tenements, glebe-lands, and all pastures, meadows, fee-farm rents issuing out of manors or rectories, jointly or severally charged therewith, and marshes abovesaid, for the use of the commonwealth, freed, acquitted and discharged of and from the payment of tithes, as fully as the said archbishops, bishops, deans, deans and chapters, and other the persons abovesaid did hold the same at any time during the time of ten years before the beginning of this present parliament; and of and from all and every trust and trusts in the said ordinance, acts, or any or either of them declared and appointed: and the said respective contractors and trustees, or any five or more of them respectively, shall and may, and are hereby required and authorized to contract, bargain, sell, alien and convey all and every the last mentioned premises; and to execute all powers and authorities in the sale thereof, as they may or might have done in the sale of any the honours, manors or lands in the said ordinance and first recited act mentioned.

Provided, that the said contractors shall not treat or contract with any person or persons, body politic or corporate, other than the immediate tenant or tenants of the premises hereby appointed to be sold, for the respective lands, tenements

nements and hereditaments which he or they so held, for the space of thirty days, to be accounted from the first day of November, one thousand six hundred and fifty; and in case such tenant or tenants do not agree, contract and subscribe his or their contract within the said thirty days, that then the said contractors may proceed to the sale thereof to any other person or persons, body politic or corporate whatsoever: and that all and every bargains of sale, conveyances and assurances to be made of any estate or estates in fee-simple of any the premises by this act appointed to be sold, according to such contracts as shall be agreed upon between the purchaser or purchasers and the said contractors, or any five or more of them respectively, shall be good and effectual in law, to all intents and purposes: and all and every purchaser and purchasers of the premises, or any part thereof, his and their heirs, successors and assigns, shall have, hold and enjoy the premises that shall be by him or them so purchased, discharged of all trusts and accounts whereunto the said trustees in the said ordinance and acts before recited, or in an ordinance of the sixteenth of November, one thousand six hundred and forty-six, in this act mentioned, or any or either of them, are or may be liable by virtue of the said ordinances or acts, or any or either of them; and of all suits and questions that may arise or be moved upon pretence of sale at under values, and all other claims and demands whatsoever (other than the rents and interests saved by the said ordinances and acts before recited, or any of them), and of all incumbrances made by the said trustees, or any claiming under them, or any of them: and that the same shall not be liable unto, but freed and discharged of and from all and all manner of statutes, judgments, recognizances, dowers, jointures, and other acts and incumbrances whatsoever, had, made, done or suffered, or to be had, made, done or suffered, by, from or under the said trustees, or any of them respectively, other than such conveyances and assurances as shall be had, made, done or suffered in performance and pursuance of the sales and contracts respectively made, according to the meaning of this present act (saving all such right, title and interest as in and by the said ordinances and first recited act, or any or either of them, is saved and excepted.)

And if any action shall be brought against the said trustees, contractors, treasurers, or other officer, or any of them, for any act done by any of them in execution of this act or any former act, ordinance, orders or instructions whereunto it relates, that then he or they are hereby enabled to plead the general issue, and to give this act in evidence; and if judgment shall be had for the defendant or defendants in such action, he and they shall recover double costs.

And be it also enacted by the authority aforesaid, that none of the said trustees, treasurers, contractors, registers, registers-accountant, surveyor-general, or any of their clerks, or other person or persons employed under them or any of them, in or about the premises, shall be admitted to treat or contract for any part of the premises, without leave first had and obtained from the committee for removing obstructions in the sale of the premises; and in case any the persons aforesaid shall directly or indirectly purchase any part of the premises, and the same shall be made to appear to the said trustees, every such person and persons shall forfeit the premises so by him or them purchased; and the said trustees are hereby authorized and required to seize the same, and to convey the one moiety thereof to such person and persons as shall discover the same, and his heirs, and the other moiety thereof the said contractors, upon such certificate thereof, are hereby empowered to expose to sale for the benefit of the commonwealth.

And whereas there is a necessity of raising a considerable sum of money for the maintaining of the army and forces in England, Scotland, and Ireland, and towards the maintenance of the navy, the parliament does therefore enact and ordain, and be it enacted and ordained by authority thereof, that (over and above the sum of three hundred thousand pounds formerly appointed to be borrowed upon the security of the said lands of the said deans and chapters, and other persons in the said first-recited act mentioned) the sum of one hundred and twenty thousand pounds shall be borrowed (upon the security as well of all and every the premises by this act appointed to be sold, as also of so

1650.

much of the honours, manors, lands, tenements, and hereditaments, by the said first recited act appointed to be sold, as shall amount to the value of one hundred thousand pounds) by way of doubling the like sum as shall be due to any person or persons, body politic or corporate, which by the said first recited act for sale of the lands of the said late deans, deans and chapters, or by any additional act, instructions or notes of parliament might have been doubled upon the security of the said lands; together with such interest, and in such manner, as in and by the said acts, instructions and notes respectively is and ought to have been allowed.

And be it further enacted, that it shall and may be lawful to and for any person and persons, body politic or corporate, to grant such his and their public faith monies, or other monies so admitted to be doubled as aforesaid, and the bills, certificates of receipts for the same, and the interest due and to be due thereupon, unto any other person or persons, and all and every such assignee and assignees shall have the like benefit and advantages, to all intents and purposes as the first lender or owner might have had within the intent of this act: and that it shall and may be lawful for any person or persons, body politic or corporate, who shall advance by way of doubling as aforesaid, any sum or sums of money towards the raising of the said one hundred and twenty thousand pounds; upon the security of the premises, to assign the monies which shall be due unto him or them upon such doubling, and the interest and benefit thereof, to any other person or persons; and that in case such original creditor or assignee shall become a purchaser of any part of the premises, all and every sum and sums of money due by or upon such doubled bills, shall be accepted, reputed and taken in satisfaction of the whole, or any part of the monies contracted for upon such purchase, as if the same had been paid in ready monies; and all officers concerned therein, are hereby authorized and required to admit and allow the same, and to proceed accordingly.

And it is further enacted by the authority aforesaid, that every person and persons, body politic or corporate, who shall lend any monies on the said security as aforesaid, and shall have his or their debt and interest stated by the register-accountant named in the first recited act, shall pay in to the treasurers in this act named, the monies wherewith he ought to double as aforesaid, within ten days next after the certificate thereof made to the said treasurers, or otherwise shall lose his monies due upon the public faith, unless he or they shew good cause to the treasurers or any two of them, to be allowed by them or any two of them for his or their neglect.

And be it further enacted, that the commissioners for the sequestering the estates of, and compounding with delinquents, shall have, use and exercise; and hereby have and may use and exercise all such and the like powers and authorities, as any former committee or committees for sequestration had, did or might use by any ordinance or act of this present parliament, for the sequestering of the estate of any person or persons which has been, or should have been certified by the aforesaid respective treasurer or treasurers unto the said committee, committees or commissioners, not to have perfected, or hereafter shall not have perfected their conveyance or conveyances of any of the premises by them contracted for, or to be contracted for within two months after the respective contracts; which certificate or certificates the said treasurer or treasurers are hereby required to make and transmit from time to time unto the said commissioners, and the said commissioners are hereby enjoined and required from time to time to proceed accordingly.

And it is further enacted, that Thomas Noel, Stephen Estwick, and William Hobson, esquires, shall be treasurers for the said service; and that they or any two of them are hereby impowered and authorized to receive the said one hundred and twenty thousand pounds; and all other such sum and sums of money as from time to time ought to be paid into the treasury by virtue of this act, which shall be issued out and paid, according to such orders, warrants, directions or instructions as they shall from time to time receive from the parliament or council of state.

And for the better enabling the said trustees in the execution of the trust in them

them reposed, be it enacted and ordained, and it is enacted and ordained by this present parliament, and the authority thereof, that the respective treasurers in the said ordinance and first recited act named, be required and enjoined by or before the first day of November, one thousand six hundred and fifty, to deliver unto the respective trustees in writing, a true and perfect account of all monies which have been by them received or paid forth, and of what remains in their hands respectively, and shall likewise weekly deliver unto the said trustees a perfect account of all receipts and payments by them had or made respectively; which account and accounts the said trustees or any five of them, other than the said treasurers, are hereby authorized to receive and examine: and in case the said trustees shall find any sum or sums of money charged in or by the said accounts, or any of them, not warranted by order from the parliament or council of state, or by warrant from the said trustees, that then every such sum and sums of money shall be disallowed upon the said account, and shall stand charged as monies in cash remaining in the hands of the said treasurers respectively; and that it shall and may be lawful to and for the said trustees, or any five or more of them, and they are required to issue out warrants for the payment of all and every such sum and sums of money, in such sort as they are enabled to do for any other monies in the hands of the said treasurers, in pursuance of the trust in them reposed; and the said respective treasurers are hereby enjoined and required to make payment thereof accordingly.

And be it further enacted by the authority aforesaid, that the surveyor-general named in the first recited act, be, and is hereby authorized and empowered, where any rent or rents is and are reserved upon any lease or leases of tithes, together with any the premises hereby appointed to be sold, to apportion all and every such rent and rents, according to the respective values of the said tithes and premises so jointly demised: and the said rent to be apportioned, shall stand charged upon the said tithes and premises respectively, and shall be held and enjoyed by the owners and proprietors of the reversion according to their respective interest therein: and the respective registers in the said ordinance and first recited act named, and their deputies respectively, are hereby authorized and required, upon a warrant or warrants from the respective contractors, to make out, rate and sign one or more particulars of all and every the premises hereby appointed to be sold, charged only with so much rent as shall by such apportionment be charged upon the same: and that the respective contractors do upon such particulars proceed to contract with any purchaser or purchasers for the same, and to make sale thereof accordingly.

And be it further enacted by the authority aforesaid, that where any reprises have been made to any purchaser or purchasers of any the lands of the said archbishops, bishops, deans, deans and chapters, or other the persons in the said ordinance and first recited act, or either of them, mentioned, for or in respect of any duty or charge payable out of all or any the premises by the said ordinance and act, or either of them, appointed to be sold, for or in respect of any pious, charitable, or other use or uses, and such duty or payment has been fixed or settled upon any particular manor, lands, tenements or hereditaments aforesaid, by the surveyors, surveyor-general and contractors respectively, mentioned in the said ordinance or first recited act, or by any of them, or by the committee of parliament appointed for removing obstructions in the sale of the said lands; all and every the said reprises are hereby allowed, and all and every such manor, lands, tenements and hereditaments so charged respectively, shall be, and are hereby declared to stand and be absolutely charged with such duty and payment, according to such settlement respectively, from the time of such sale; and that all and every other manor, lands, tenements and hereditaments aforesaid, formerly liable unto, or charged with such duty or payment, be, and are hereby declared to be from the time of such sale, absolutely freed, exonerated and discharged of and from such duty and payment, as if the same had never been charged therewith.

And be it further enacted by the authority aforesaid, that all and every rent, sum and sums of money, payment or duty, for or in respect of any pious, charitable,

1650.

ritable, or other use or uses, charged or chargeable upon all or any the premises by this act, or by the said ordinance or first recited act, or any or either of them appointed to be sold, and yet remaining unsold, be, and are hereby charged upon the rents, issues and profits of the said appropriations, tithes appropriate, donatives, oblations, obventions, pensions, portions of tithes, and other the premises by the said act, intituled "An Act for providing Maintenance for Preaching Ministers, and other Pious Uses," or by the said act, intituled, "An Additional Act for providing Maintenance for Ministers, and other Pious Uses," or either of them, settled and vested in the trustees therein named (except the said glebe-lands and other the premises by this act appointed to be sold) and that the trustees in the said last mentioned act named, shall from time to time make payment in the first place of all and every such rent, sum and sums of money, or other duty, out of the said rents, issues and profits, unto such person and persons, for such pious, charitable, or other use and uses, as ought to receive the same; and that all and every the premises by this act appointed to be sold, or by the said ordinance or first recited act appointed to be sold, and yet remaining unsold, be, and are hereby freed, exonerated and discharged of and from all and every such rent, sum and sums of money, payment and duty: and that all and every purchaser and purchasers of the premises, or any part thereof, shall hold and enjoy the lands and premises so by him or them to be purchased, freed and discharged of and from all and every such rent, sum and sums of money, payment and duty, as if the premises so by him to be purchased, had never been liable thereunto, or charged therewith.

And be it further enacted by authority aforesaid, that the said treasurers shall have allowed unto them for their pains, and the payment of their clerks and tellers, two-pence in the pound for all and every sum and sums of money which shall be paid into the treasury by force of this act in ready money, or satisfied by bills, which by this act are and ought to be admitted in payment for the purchase of the premises or any of them: and that the respective trustees, contractors, registers, registers-accountant, and surveyor-general in the said ordinance and first recited act named respectively, shall do, execute, observe and keep all and every the like powers, authorities, orders, directions and instructions in relation to the premises hereby appointed to be sold, or any of them, as they and every of them ought to do, or to have done in reference to other the manors, lands, tenements and hereditaments of the said archbishops, bishops, deans, deans and chapters, and other persons in the said first recited act mentioned, and shall have and receive such and the like salaries and fees for them and their clerks respectively, and in such sort and manner as they and every of them respectively are and ought to have and receive for their respective services and employments, touching other the manors, lands, tenements and hereditaments by the said ordinance and first recited act, or either of them, appointed to be sold.

And be it further enacted by authority aforesaid, that if any of the said trustees, contractors, treasurers, registers, or any other officer or officers in the said ordinance of the sixteenth of November, one thousand six hundred and forty-six, or the said first recited act, or either of them named, or any of their clerks, or any other person or persons employed under them or either of them, in or about the lands or revenues of the said archbishops, bishops, deans, deans and chapters, and other the persons aforesaid, shall, from and after the first day of October, one thousand six hundred and fifty, demand, ask, take or receive of any person or persons whatsoever, who shall be or desire to be a purchaser of any part of the premises, for or by colour of, or upon pretence for expedition, preference, salary, gratuity or reward, any sum or sums of money, further or other than the salaries and allowances settled and appointed by the said ordinance and first recited act, or any other act of parliament, unto the respective trustees and contractors aforesaid, and other than the fees appointed and allowed by the said ordinance, and first recited act, or either of them, or by the committee for removing obstructions in the sale of the premises, for and unto the respective registers therein named, and their clerks, all and every such officer and officers, person and persons so offending, shall for every such offence
lose

lose and forfeit treble the value of such sum and sums of money as he shall so demand, ask, take or receive, the one moiety thereof to the use of the commonwealth, and the other moiety to the party grieved, or that will sue for the same in any court of record.

And for the better expediting the sale of the premises, be it further enacted by the authority aforesaid, that the trustees named in the said act, intituled, "An Additional Act for providing Maintenance for Ministers, and other Pious Uses," be authorized and required to deliver, or cause to be delivered back unto the respective registers in the said ordinance and first recited act named, all and every such original surveys as have been by them or either of them delivered unto the said trustees, in obedience unto the said act; and that the said respective registers shall keep and retain the original surveys, the said last recited act, or any thing therein contained to the contrary notwithstanding: and that the said respective registers be authorized and required, by warrant from the said trustees, to make forth and deliver unto the said trustees, or such person or persons as they shall appoint, true copies of such surveys, or so much of any survey to them returned, as does or shall concern tithes, or any other the premises vested in the said trustees, and not appointed by this act to be sold, he or they paying for such copies after the rate of two-pence for every sheet.

Original surveys to be delivered to the register, who shall keep the same, and make and deliver copies to the trustees.

And be it further enacted, that the committee of parliament appointed for removing obstructions in the sale of the lands of the late deans, deans and chapters, and other the persons in the said first recited act mentioned, shall be, and are hereby appointed to be a committee for removing obstructions in the sale of all and every the premises hereby appointed to be sold; and shall have, use and exercise all and every the like powers and authorities in reference to the premises hereby appointed to be sold; as the said committee may or ought to do, in relation to the sale of any other the manors, lands, tenements and hereditaments of the said late deans, deans and chapters, and other the persons in the said first recited act mentioned.

And be it enacted by the authority aforesaid, that the said ordinance of the ninth of October, one thousand six hundred and forty-six, intituled, "An Ordinance of Parliament, for the Abolishing of Archbishops and Bishops within the Kingdom of England and Dominion of Wales, and for settling of their Lands and Possessions upon Trustees, for the Use of the Commonwealth;" and also an ordinance of the sixteenth of November, one thousand six hundred and forty-six, intituled, "An Ordinance of the Lords and Commons assembled in Parliament, for appointing the sale of the Bishops Lands for Use of the Commonwealth," and all and every additional and other ordinance, orders and instructions of parliament, touching the sale of the said lands and possessions, and now in force, be, and are hereby declared to be of as full force and strength, as if the same had been enacted, settled and established by act of parliament, and shall so remain and continue: and that every person and persons, bodies politic or corporate, that have purchased, or hereafter shall purchase any of the honours, manors, lands, tenements or hereditaments of any of the said late archbishops or bishops, and have or shall have the same conveyed unto them or any of them, their heirs or assigns, by the trustees appointed by the said ordinance of the ninth of October, one thousand six hundred and forty-six, his and their heirs, successors and assigns shall have, hold and enjoy the same, and every part and parcel thereof, so by him or them purchased or to be purchased, with all and singular the profits, commodities, advantages and emoluments thereunto belonging or appertaining, to all intents and purposes, and in as full and ample manner, and as firmly as if the same had been settled by act of parliament upon such purchaser and purchasers.

Provided always, that this act, or any thing therein contained, shall not extend, or be construed to extend unto any messuage, house, lands, tenements or hereditaments lately belonging to any archbishop, bishop, dean, dean and chapter, or other the persons in the first recited act mentioned, or any of them, in right of his or their said title, office or function, which is or are in express words, and by particular name saved out of, or concerning which any proviso or provisos are contained in the said ordinance of the sixteenth of November, one thousand six hundred and forty-six, or the before recited acts, or any of them,

1650.

them, or which are or have been settled or disposed of by any act, ordinance or order of parliament, to or upon any particular person or persons, or to or for any particular use or uses, other than the uses mentioned in the said before recited acts for maintenance of preaching ministers, and other pious uses; nor to any augmentation heretofore granted or settled by any ordinance or order of parliament, unto or upon any preaching minister or ministers, out of any rectory or parsonage impropriate, late belonging to any archbishop, bishop, dean, dean and chapter, or other the persons in the said first recited act mentioned.

Provided also, that this act, or any thing therein contained, shall not extend, nor be taken or construed to extend to the sale of the royalties of or belonging to the city of Westminster and liberties thereof, or of any office or offices thereunto appertaining, or any the issues or profits thereof.

Provided, that this act, or any thing therein contained, shall not extend to any glebe-lands or fee-farm rents issuing out of manors or rectories, or out of manors and rectories jointly, late belonging to any the said archbishops, bishops, deans, deans and chapters, &c. which be already sold by the trustees for sale of the lands of the said archbishops, bishops, deans and chapters respectively, or settled by act or order of parliament; but that the purchaser and purchasers, their heirs and assigns, shall hold and enjoy the same, according to their respective conveyance and conveyances.

Provided, that this act, or any thing therein contained, shall not extend to the sale of any church or public chapel, or to any churchyard or ground used for a common burial place, any thing in this act contained to the contrary in anywise notwithstanding. Passed 16 Oct. Vide 1656. cap. 10.

Anno 1650. c. 30. [Scob. p. 2. 140.]

Explanations and Additions to the precedent Act for Sale of Manors of Rectories, &c.

WHEREAS by an act of this present parliament, intituled, "An Act for Sale of the Manors of Rectories and Glebe Lands late belonging to Archbishops, Bishops, Deans, Deans and Chapters," it is (among other things) enacted and ordained, that (over and above the sum of three hundred thousand pounds, formerly appointed to be borrowed upon the security of the lands of the said late deans and chapters, and other persons mentioned in the act for abolishing of deans, deans and chapters, &c.) the sum of one hundred and twenty thousand pounds shall be borrowed upon the security as well of all and every the premises by the act herein first recited appointed to be sold, as also of so much of the honours, manors, lands, tenements, and hereditaments, by the said act for abolishing of deans, deans and chapters, &c. appointed to be sold, as shall amount to the value of one hundred thousand pounds, by way of doubling the like sum upon such debts due or owing, and in such manner as in the said first above recited act is mentioned; for the clear stating of which security, the parliament doth further enact and declare, and be it further enacted and declared by the authority thereof, that all and every the honours, manors, glebe lands, and other lands, tenements, and hereditaments upon the security whereof the said sum of one hundred and twenty thousand pounds is by the said first recited act appointed to be borrowed, shall be, and are intended to be security as well for the debts, principal and interest, which shall be doubled, as for the monies which shall be advanced and paid in to double the same, and for such interest therefore from the time of such doubling, until payment or satisfaction thereof, unto the respective creditors, their executors or assigns, as is directed to be allowed in or by the said first recited act: and that all and singular the honours, manors, lands, tenements, and hereditaments, which by the said act for abolishing of deans, deans and chapters, &c. were exposed to sale, and not contracted for before the five-and-twentieth day of October, one thousand six hundred and fifty, (other than such as by the act herein first recited are reserved from sale) shall be and are hereby declared to be part of the securities aforesaid: and that if the manors, lands, tenements, and

and hereditaments (by the said act for abolishing of deans, deans and chapters, &c.) exposed to sale, so contracted for, before the said five-and-twentieth day of October, one thousand six hundred and fifty shall (according to the rates at which the same were contracted for) amount unto a greater value than the monies, debts, and other charges which before the second day of October, one thousand six hundred and fifty were charged upon the same, or to be satisfied thereby, and it be so declared by the committee of parliament for removing obstructions in the sale of deans and chapters lands, then and in that case the overplus of the value of the premises so contracted for, shall also be, and shall be accounted as part of the security of the monies which shall be lent and doubled as aforesaid; and the same monies so lent and doubled, shall be admitted and allowed of in payment of the said overplus value in course only as such contracts were made.

And be it further enacted and ordained by the authority aforesaid, that the contractors, trustees, and all other officers, by the said act for abolishing of deans, deans and chapters, appointed to do any thing in order to, or about the sale of any of the lands in that act mentioned, shall proceed respectively as to and in the sale of the manors of rectories and glebe lands, with their appurtenances, so in like manner to and in the sale of all other the honours, manors, lands, tenements, and hereditaments hereby declared or intended for security as aforesaid; and that the trustees in whom the said premises (so intended for security) are respectively vested, and their heirs respectively, shall stand seised thereof, and of the rents, issues, and profits of the same, until sale, and of the monies which shall be raised by the sale thereof, unto and for the uses following; viz. for the payment of the monies and debts which shall be owing upon the security of the said premises; and all salaries, and other incident charges touching the same, and the trust in them reposed, and the remainder thereof to the use of the commonwealth, in such manner as the parliament shall appoint: and that all and every the said rents, issues, and profits of the premises, and the monies to be raised by the sale thereof, shall be paid and issued out, to and for the use aforesaid, by the treasurers thereof, upon and according to such warrants as they shall receive from the trustees for deans and chapters lands, or any five or more of them in that behalf.

And be it further enacted and ordained by the authority aforesaid, that as well the treasurers in the said first above recited act named, as the respective trustees, contractors, registers, registers-accountant, and surveyor-general, and other officers and persons in the said first recited act mentioned, shall do, execute, observe, and keep all and every the like powers, authorities, orders, directions, instructions, matters, and things, in relation to the premises hereby appointed or mentioned to be sold, and in relation to the doubling before mentioned to be intended upon the security thereof, as they and every of them ought to do, or to have done in reference to other the manors, lands, tenements, and hereditaments of the said archbishops, bishops, deans, deans and chapters, and other the persons in the said first recited act mentioned, or in reference to any doubling formerly had upon the security of deans and chapters lands; and shall have and receive therefore such and the like salaries and fees respectively, and in such sort and manner as they and every of them respectively are and ought to have and receive for their respective services and employments touching those other manors, lands, tenements, and hereditaments, by the purport of any of the ordinances, acts, or instructions in the said first and above recited act mentioned, and no more nor other salaries or fees whatsoever, without incurring the penalties mentioned in that behalf in the acts herein first recited.

1654.

Anno 1654. c. 14. [Scob. p. 2. 299.]

Twenty Thousand Pounds, besides the former Sums, shall be borrowed upon Deans and Chapters Lands.

WHEREAS by one act of parliament, intituled, "An Act for Sale of the Manors of Rectories and Glebe Lands, late belonging to Archbishops, Bishops, Deans, Deans and Chapters," it is enacted and declared, that all manors of rectories impropriate, messuages, tenements, glebe lands, pastures, meadows, marshes, belonging to any rectory impropriate, and fee-farm rents issuing out of manors or rectories impropriate, jointly or severally charged therewith, late belonging or appertaining to any rectory impropriate, parsonage, church, chapel, or donative, late appertaining or belonging to any archbishop, bishop, dean, dean and chapter, prebend, or other person or persons, or bodies politic, mentioned in one ordinance of the ninth of December, one thousand six hundred forty-and-six, intituled, "An Ordinance of this present Parliament for Abolishing of Archbishops and Bishops within the Commonwealth of England, and Dominion of Wales, and for settling their Lands and Possessions upon Trustees for the Use of the Commonwealth;" and in one act of parliament, intituled, "An Act of the Commons of England in Parliament assembled, for the Abolishing of Deans, Deans and Chapters, Canons, Prebends, and other Offices and Titles of or belonging to any Cathedral or Collegiate Church or Chapel within England and Wales," to be abolished in right of his or their said office or function, should be and were settled in the full seisin and possession of the respective trustees in the said ordinance and act named, their heirs and assigns. And the said respective trustees in the said ordinance and act named, were authorized and required to contract, bargain, sell, alien, and convey all and every the premises, and to execute all powers and authorities in sale thereof, as they might have done in the sale of any honours, manors, or lands in the said ordinance and act mentioned.

And whereas likewise by one other act, intituled, "An Additional Act for the more speedy effecting of the Sale of the Manors of Rectories and Glebe Lands, late belonging to Archbishops, Bishops, Deans, Deans and Chapters, &c. and for the better Encouragement of Lenders upon the Security thereof, and of other Lands and Hereditaments of the said Deans and Chapters," the parliament did enact and declare, that all and singular the honours, manors, lands, tenements, and hereditaments, which by the said act for abolishing of deans, deans and chapters, &c. were exposed to sale, and not contracted for before the five-and-twentieth day of October, one thousand six hundred and fifty, (other than such as by the said last recited act were reserved from sale) should be, and were thereby declared to be part of the security for the one hundred and twenty thousand pounds, which by the said before recited act was to be borrowed, and should extend to secure as well the debts, principal and interest, which should be doubled, as the monies which should be advanced and paid in to double the same, and the interest from the time of doubling until the payment. And that if the manors, lands, tenements, and hereditaments, (by the said act for abolishing of deans, deans and chapters, &c. exposed to sale) so contracted for before the five-and-twentieth day of October, one thousand six hundred and fifty, should (according to the rates at which the same were contracted for) amount unto a greater value than the monies, debts, and other charges, which before the second day of October, one thousand six hundred and fifty, were charged upon the same, or to be satisfied thereby, and it should be so declared by the committee for obstructions: that in such case the overplus of the value of the premises so contracted for, should also be, and should be accounted as part of the security for the said monies: And it was also enacted and ordained, that the trustees in whom the same premises so intended for security were respectively vested, and their heirs respectively, should stand seised thereof, and of the rents, issues, and profits thereof until sale, and of the monies which should be raised by the sale thereof, unto

unto and for the uses following, viz. for the payment of the monies and debts which should be owing upon the security of the said premises, and all salaries and incident charges, and the remainder thereof to the use of the commonwealth, in such manner as the parliament should appoint; and that all and every the said rents, issues, and profits of the premises, and monies to be raised by the sale thereof, should be paid and issued out to the purposes aforesaid, by the treasurers thereof, according to such warrant as they should receive from the trustees for deans, deans and chapters lands, or any five or more of them in that behalf: and whereas by the last recited act, all and every the premises so appointed for security as aforesaid, were appointed to be sold, and were absolutely disposed unto the said respective trustees for that purpose, as well for satisfying the monies upon the said security, and for raising monies for the service of the commonwealth; as also to put a full end unto the business, and the charge of officers and others employed therein.

And whereas nevertheless, some part of the premises yet remaineth unsold, there being so much already contracted for, as is sufficient to satisfy all the monies due upon the former securities: and whereas also former contracts could not be so exactly settled as to the precise sums, by differing securities respectively charged upon the revenue of the said deans, deans and chapters, and other the premises aforesaid, whereby some sort of debts, to which the said premises are liable, are more than provided for to a considerable value, and the rest not applicable to satisfy such overplus, which doth tend to the disadvantage both of particular persons, and also of the commonwealth, by retarding the whole work.

To the end therefore a speedy end may be put to the said sale, and the commonwealth eased of the burthen and charge thereof, be it ordained by his Highness the Lord Protector, by and with the consent of his council, and it is ordained by the authority aforesaid, that over and above the sum of three hundred thousand pounds appointed to be borrowed upon the security held forth by the first recited act, and over and above the sum of one hundred and twenty thousand pounds more, borrowed upon the security held forth in the two last recited acts, or either of them, the sum of twenty thousand pounds shall be further borrowed, upon the security of such of the premises respectively exposed to sale by the said acts, or either of them, in such sort as is hereafter expressed, by way of doubling the like sum as shall be due to any person or persons, bodies politic or corporate, for any money, plate, horse, arms, or other thing advanced upon the public faith, or which hath been at any time allowed by any act or ordinance of parliament to be doubled, as public faith, together with interest upon such public faith debts, after the rate of eight pounds in the hundred by the year, until the stating of such debts and interest, by the persons named and appointed in and by an act of parliament, intituled, "An Additional Act for Sale of several Lands and Estates forfeited to the Commonwealth for Treason," to be registers-accountant, or any of them, which the said persons, or any of them, are hereby authorized to state accordingly. And after the stating of such debts and interest, and doubling thereof, the respective creditors to be allowed only six pounds in the hundred by the year, for the whole of such doubled public faith debt, until payment thereof, or defalcation upon purchase; in relation to which doubling intended by this ordinance, the trustees, treasurers, register-accountant, and all other officers concerned therein, are hereby authorized and required to proceed according to the directions of the acts of parliament in like case made and provided, save only as to what is hereby altered, restrictive to the debts, and to allowance of interest as aforesaid, and all and every person and persons, body politic and corporate, to whom any debts capable of doubling within this present ordinance, shall be due, and his and their respective assigns, and all persons doubling such debts, and their respective assigns, shall have all and the like liberties, privileges, benefits, and advantages respectively, in reference to the premises, as any such person or persons, bodies politic or corporate, their or any of their assigns, might or ought to have had by the aforesaid recited acts or either of them, save only what is hereby altered with restriction to debts and interest

1654.

interest as aforesaid, and all and every person and persons who shall have their debts and interest stated as aforesaid, shall pay in to the treasurers named in the said act for sale of the said manors of rectories, &c. or one of them, the money wherewith he or they ought to double within ten days next after certificate thereof to the treasurers, or otherwise shall lose his or their public faith debts, unless he or they shall shew good cause to the treasurers, or any one of them, for his or their failure therein.

And be it further ordained, that both the certificates or receipts to be given by the said treasurers, or one of them, for monies to be doubled upon the security held forth by this present ordinance, as also all certificates, receipts, or bills for monies, or debts doubled or transferred upon the securities held forth by any the acts aforesaid, which were defalkable in payment for any purchase made within the same former acts or any of them, shall be and are hereby made to the defalkable in payment, in manner and form following; that is to say, the certificates or receipts for monies to be doubled upon the securities held forth by this present ordinance, shall be defalkable in payment for both moieties of the purchase-monies payable for any part of the premises which yet remain uncontracted for, and in payment for second moieties payable upon contracts made of any of the said premises, at any time before the passing of this ordinance; and the certificates, receipts, or bills for monies doubled, or transferred upon the securities held forth by any of the said acts, shall be equally and alike defalkable for any or both moieties of the purchase-money, payable for any the premises exposed to sale by any the former acts, either contracted or uncontracted for: and the treasurers and all other officers concerned therein, are hereby authorized and required to admit and allow thereof accordingly; provided, that all defalcations to be made by virtue of this ordinance, for monies due upon any the certificates, receipts, or bills aforesaid, shall be of one distinct account, as to the whole, or any moiety of the purchase-money for which they shall be so defalked; provided also, that where any purchaser or purchasers, his or their assignee or assignees, shall tender any bills or receipts by this ordinance made applicable for payment of any second moiety, other than such bills or receipts, as by his or their contract ought to have been applied thereunto; the party or parties so tendering such bills or receipts, shall defalk so much more in value, as shall countervail the interest incurred by his or their elapsed time; for which second moieties, as also for defalcations as aforesaid, the said treasurers, or one of them, are hereby authorized to give such purchasers his or their receipt or acquittance and re-conveyance accordingly.

Doubtful returns
on surveys.

And be it further ordained and declared by the authority aforesaid, that where any present estate of or in any of the lands or possessions of the late archbishops, bishops, deans, deans and chapters, canons, prebends, and other the persons aforesaid, shall be doubtfully returned upon any survey, either as the certain being or legality of any lease or copy of court-roll, or any life or lives upon any lease or copy of court-roll, the tenant or tenants claiming such lease, copy, or estate, shall (as to the lands already surveyed) before the first day of July, one thousand six hundred and fifty-four; and as to the lands unsurveyed, within three months next after the respective returns of the surveys thereof to the respective registers for sale of the premises, make proof of his or their estate or estates before the commissioners for removing of obstructions, and procure their order for allowance thereof, or otherwise, shall be for ever barred and excluded from any benefit or advantage thereof. Provided nevertheless, that the power given by the former acts to the surveyor-general, as also the power given by ordinance of parliament to the contractors for sale of bishops lands, for allowance of any estates made good by proof before them respectively, within forty days next after the return of the survey of any of the premises, be not any ways impeached. And provided also, that the power given or transferred to the commissioners for removing of obstructions, by ordinance or act of parliament for allowance of estates, be not any ways hereby enlarged.

And be it further ordained, that any two surveyors commissioned by the
respective

1654.

respective trustees for sale of the premises, shall have like power to all intents and purposes, as is given to any three or more surveyors, so commissioned by the ordinance for sale of bishops lands, and that for the perfecting of any surveys already returned, or which shall be returned imperfect, where the charge of a re-survey (in regard of the small value of the lands, remoteness of their situation, or otherwise) may be conceived too great for the commonwealth to bear; it shall be in every such case in the power of William Webb, Esq. surveyor-general, to inform himself by the best means and ways he can, touching the premises, either by oath or otherwise, (which oath he is hereby authorized to administer,) and upon such information had, and by him communicated to the respective contractors, or any three or more of them, he shall and may, by and with their advice, amend and perfect any such survey accordingly.

The surveyor-general may amend and perfect imperfect surveys upon information by oath or otherwise.

And be it further ordained by the authority aforesaid, that in case any person or persons who hold in his or their possession or tenure, any of the lands, tenements, and hereditaments of the late archbishops, bishops, deans, deans and chapters, canons, prebends, &c. which by this present ordinance, or any ordinance or former acts of parliament are exposed to sale, and yet undiscovered, and which are or ought to be in the present possession of the respective trustees for the use of the commonwealth, shall make the first discovery thereof to the surveyor-general before-named; every such person or persons desiring the same, shall be admitted the pre-emption of all such lands, rents, duties, and payments, by him or them discovered, at the lowest rates the respective contractors are enabled to sell the same for, by any act or ordinance or parliament in that behalf; and where any person or persons possessed of any the lands or premises aforesaid, yet undiscovered, by virtue of any lease or copy of court-roll, dated before the first of December, one thousand six hundred and forty-one, granted by any who had power to make or grant the same, shall, before the said first day of July, bring or send in a true copy of his or their lease or leases, copy or copies of court-roll, to the said surveyor-general, that a survey may be had of the premises, every such person coming in within thirty days next after the return of any such survey, shall be admitted to the pre-emption of the reversion of his lease or copy, with the present rent incident thereunto at the lowest rates the respective contractors are enabled to sell as aforesaid. And in case of his or their neglect to bring or send in such true copy or copies, before the said first day of July, all and every such person and persons shall forfeit and lose his or their present estate by lease or copy; and any person or persons who afterwards shall discover the same, shall have and be admitted to the pre-emption of the present possession of such lands, and have the same conveyed to him or them, or to whomsoever he or they shall nominate, and to his or their heirs and assigns, at the like lowest rates the contractors are enabled to sell as aforesaid, any clause in this ordinance, or any former act or ordinance of parliament to the contrary notwithstanding.

And be it further ordained by the authority aforesaid, that Sir William Roberts, Knight, John Blackwel, the elder, James Russel, Timothy Middleton, Robert Fenwick, Thomas Aires, and Edward Cresset, Esquires, contractors named (with others) in an ordinance of the lords and commons assembled in parliament, of the sixteenth of November, one thousand six hundred and forty-six, appointing the sale of the lands and possessions of the late archbishops and bishops, for the use of the commonwealth, or any three or more of them, be, and are hereby authorized to do, use, exercise, perform, and execute all and every the act and acts, authorities, powers, and things relating as well to the sale of the said lands and possessions, as to the sale of the manors of rectories and glebe lands, &c. lately belonging to the said archbishops and bishops; which any six or more of the contractors named in the said ordinance, by virtue thereof, or any five or more of them, by virtue of the former recited act for sale of the manors of rectories, or by virtue of any additional ordinances or acts of parliament concerning the sale of the premises respectively, may, might, or ought to have done, used, exercised, performed, or executed, to all intents, constructions, and purposes.

And

1654.

And it is also further ordained, that the respective trustees, contractors, treasurers, register-accountant, surveyor-general, and all other officers attending the sale of the premises, and every of them, be hereby authorized and required in all things relating to the putting of this ordinance in execution (other than such as are hereby altered or otherwise directed) to pursue the directions of the former acts and ordinances respectively concerning the same. And for the more proper issuing out of the rents, issues, and profits of the premises, together with the monies arising by the sale thereof, it is further ordained by the authority aforesaid, that the trustees for sale of bishops lands, shall have power, and are hereby empowered to make warrants to the treasurers for the sale of the manors of rectories, glebes, &c. or one of them, for the payment of such incident charges as have or shall arise upon the sale of the manors of rectories, glebes, &c. belonging to the late archbishops and bishops only : and the said treasurers are hereby required to pay and discharge the said warrants from time to time accordingly, any thing in any former act to the contrary hereof notwithstanding : and also that the treasurers appointed by this ordinance to receive such monies as shall be doubled hereon, shall not issue forth any part of the twenty thousand pounds hereby appointed to be doubled, but by, and in such manner, as his Highness with the advice and consent of the council shall direct.

Provided, that this ordinance nor any thing therein contained, shall not extend to empower the respective treasurers to grant any further or greater allowance to any persons employed or to be employed in the perfecting of this work, than what hath been heretofore allowed unto them or any of them, or to others in their places respectively.

And be it moreover ordained by the authority aforesaid, that James Noel shall be treasurer in the room of Alderman Thomas Noel, late deceased, in relation to all monies heretofore doubled at Weavers Hall, upon the security of bishops lands, &c. who is hereby empowered and required to execute and perform all and every such powers and authorities and duties relating to the discharge of his place, as the said Thomas Noel by virtue of any former ordinance or act of parliament might have done.

1656.

Anno 1656. c. 29. [Scob. p. 2. 510.]

For quiet enjoying sequestered Parsonages and Vicarages by the present Incumbents.

Incumbents settled by the parliament, &c. may have, sue for and recover tithes.

BE it enacted by his Highness the Lord Protector, and this present parliament, that every person who hath been, or shall before the first day of July, one thousand six hundred and fifty-seven, be settled by the parliament, or any authority derived from them, or by his Highness the Lord Protector, or the lords commissioners of the great seal, in any parsonage or vicarage, presentative or donative, or hospital within this commonwealth, heretofore sequestered by parliament, or any authority derived from them, and shall on the first day of July aforesaid, be in the possession thereof, the sequestered or ejected minister being then living, such and no other person shall be, and is hereby adjudged and deemed the lawful incumbent to all intents and purposes, and shall and may have, retain and possess, sue for, and recover all tithes, and other profits and advantages whatsoever thereunto belonging, as if he had been legally instituted and inducted, any law or statute to the contrary in any wise notwithstanding.

Patrons may present upon death, &c. of present incumbents.

And it is further enacted by the authority aforesaid, that upon the death, resignation, or removal of the minister, formerly settled as aforesaid, and now adjudged the incumbent, it shall be lawful for the patron (being neither delinquent or papist) to present to such living, as if the incumbent formerly sequestered had been dead.

Allowances to sequestered ministers.

Provided always and be it further enacted by the authority aforesaid, that where the sequestered or ejected minister is not seised of or to his own use, or others in trust for him or his wife, of the real estate of thirty pounds *per annum*,
or

or possessed of a personal estate to the value of five hundred pounds, the commissioners, that are or shall be appointed for the ejection of scandalous, ignorant, and insufficient ministers and schoolmasters, or any five of them, shall within their limits make unto the sequestered minister, during his life, allowance out of the profits of the said parsonage or vicarage, not exceeding a fifth part of the profits thereof; and the said commissioners or any five of them, are hereby empowered and required to sequester for the use of (and cause to be paid over to) the said sequestered minister the said allowance, with such arrears thereof, as the said commissioners shall think fit, in case the incumbent shall refuse to pay the same.

Provided, that no ejected or sequestered minister shall have or receive any benefit or advantage by virtue of this act, that resides and remains in the parish or place out of which he is ejected or sequestered, during such residence, any thing before in this act, or any other matter or thing to the contrary hereof notwithstanding.

Provided always, that nothing in this act shall extend to the charging any person hereby made and constituted incumbent in law, with the payment of first-fruits, until the death of the said person ejected or sequestered from any such parsonage or vicarage as aforesaid, at which time he shall be liable to pay the same. First fruits, when payable.

Provided also, and it is hereby declared, that where any part of the tithes, or other profits have been taken away by any of the authorities aforesaid, from any parsonage or vicarage, presentative or donative, and settled upon any chapel or other place, for the increase of maintenance of such place, nothing contained in this act shall extend to the taking away such augmentations from such places, but they are hereby confirmed and settled as aforesaid, during the life of the person hereby adjudged the incumbent. Where tithes, &c. have been taken from parsonages.

Provided always, that this act, or any thing therein contained, shall not extend to give or confirm unto Anthony Laphorn, the present minister of Sedgefield, in the county of Durham, any right or title to the profits of the said rectory of Sedgefield, save only to so much thereof as shall amount unto the sum of two hundred pounds *per annum*, allowed unto him out of the profits of the said rectory by the committee of the late parliament for plundered ministers, any thing in this act contained to the contrary in any wise notwithstanding.

Provided always, and be it enacted by the authority aforesaid, that it shall and may be lawful to and for any patron or person, having right or presentation, and not being a papist or delinquent, to present unto any church or chapel, where the incumbent hath been a delinquent and sequestered, and in which any minister hath been placed by authority of parliament, that is since deceased, and such church or chapel not supplied or presented unto before the seventeenth day of June, one thousand six hundred and fifty-seven, any thing in this act, or any other matter or thing to the contrary hereof notwithstanding. In what cases patrons may present to sequestered livings.

17 Car. 2. c. 3.

1665.

An Act for uniting Churches in Cities and Towns Corporate.

FORASMUCH as the settled provision for ministers in most cities and towns corporate within this realm, is not sufficient for the maintenance of able ministers fit for such places, whereby mean and stipendiary preachers are entertained, to serve the cures there; who wholly depending for their maintenance on the good-will and liking of their auditors, have been, and are hereby under temptation of too much complying, and suiting their doctrine and teaching to the humour rather than good of their auditors, which hath been a great occasion of faction and schism, and of the contempt of the ministry: the lords and commons in parliament assembled, being deeply sensible of the ill consequence thereof, and piously desiring able ministers in such places, and a competent settled maintenance for them by the union of churches; which is also become necessary, by reason of the great ruin of many churches and parishes

1665.

parishes in the late ill times, and otherwise; do therefore most humbly beseech your most excellent Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that in every city or town corporate and their liberties, within the Kingdom of England, and the dominion of Wales, which have a mayor and aldermen, and particular justices of the peace by charter or commission, or bailiff or bailiffs, or other chief officer or officers, and others assistants by like charter; and where two or more churches or chapels, or a church and a chapel, and the parishes thereunto belonging, do lie within the said corporation, or liberties thereof, convenient to be united; in such cases the bishop of the diocese where such parish and parishes are, with the consent of the mayor, aldermen, and justices of the peace, bailiff or bailiffs, or other chief officer or officers, or the major part of them, and of the patron or patrons of such church or churches, chapel or chapels, shall or may according to due form of law unite the said churches or chapels, or church and chapel, or any of them; and shall appoint at which church or chapel, churches or chapels the said parishioners and inhabitants of the said parishes or places to which the said churches or chapels, or church and chapel do belong, shall usually meet for the worship of God, and which of the said churches or chapels, or church or chapel shall be united and annexed unto the other, which shall be the church presentative, unto which all presentations shall thereafter be only made, and unto which the parishioners shall resort as their proper church; and after such order made, the said churches or chapel, or church and chapel shall accordingly for ever stand united: and the parishioners, and holders, and inhabitants of the said parishes and places belonging to such churches or chapels, or church and chapel so united and annexed, shall, as they or any of them become void, and from thenceforward, pay all such tithes or other duties as belong, or did belong to the incumbent of any of the said churches or chapels, or church and chapel so united and annexed, unto the incumbent of the said presentative church or chapel, unto which the said other churches or chapels, or church or chapel shall be so united and annexed.

Parishes to continue distinct as to rates, &c.

2. And it is hereby also enacted, that notwithstanding any such union to be made by virtue hereof, each of the parishes so united, shall continue distinct, as to all rates, taxes, parochial rates, charges, and duties, and all other privileges, liberties, and respects whatsoever, other than what is herein before mentioned and specified; and churchwardens shall be elected and appointed for each parish, as they were before such union made.

Where churches are full, such union to take place upon the first avoidance.

Patrons to present by turns.

3. And be it further enacted and provided, that where one or more of the said churches or chapels, or church and chapel so united and annexed, shall be full at the time of making such union, that then the said union shall take effect for every such church or chapel, upon the first avoidance after such union made: and that the several patrons of the said churches and chapels so united, shall and may present by turns to that church only which shall remain and be presentative from time to time, in such order as the said bishop, with the consent of the said mayor, aldermen, and justices of peace, bailiff or bailiffs, or other chief officer or officers within such parishes, or the major part of them, and of the patron or patrons of such church or churches, chapel or chapels, shall determine and decree for the preservation of their respective rights therein, respect being therein had to the differences of the values of the yearly maintenance belonging to such churches or chapels, or any of them; saving unto the King's Majesty, his heirs and successors, all the tenths and first-fruits of such churches and chapels so to be united, according to the rates and valuations at which the said churches and chapels are rated and valued in the office of first-fruits and tenths, in his Majesty's court of exchequer; and also reserving all procurations and pensions to all persons to whom they are now, and have been formerly, or shall be hereafter due and payable; any thing herein contained notwithstanding.

To be registered.

4. Provided always, that no union of parishes or places to be made by virtue of

of this act shall commence or be effectual in law, until it be registered in the register-book of the bishop of the diocese, which the register is hereby required to do.

1665.

5. Provided always, that no union made by virtue hereof, shall be good and effectual where the settled maintenance belonging to the parsons, vicars, and incumbents of the church or chapel, or churches or chapels so united, shall exceed the sum of one hundred pounds *per annum* clear, and above all charges and reprises; unless the respective parishioners, or the major part of them, under their hands desire otherwise.

6. Provided always, and be it enacted, that every minister settled as aforesaid, the incumbent of any church or chapel, or churches and chapels united according to this act, shall be the full and lawful incumbent thereof to all intents and purposes, so as such minister be a graduate in one of the universities of this kingdom.

7. And be it further enacted by the authority aforesaid, that every owner or proprietor, owners or proprietors of any impropriation, tithes, or portion of tithes, in any parish or chapelry within the kingdom of England, or dominion of Wales, is, are, and shall be, by virtue of this act, enabled and empowered to give or bestow, unite and annex the same, or any part thereof, unto the parsonage or vicarage of the said parish church or chapel where the same do lie, or arise, or settle the same in trust for the benefit of the said parsonage or vicarage, or of the curate and curates there successively, where the parsonage is impropriate, and no vicar endowed according to his or their respective estates, without any license of mortmain; any law or statute to the contrary notwithstanding.

Owners of impropriations, tithes, &c. empowered to annex the same to the parsonages and vicarages where the same lie and arise without license of mortmain.

8. And be it further enacted, that if the settled maintenance of such parsonages, vicarages, churches, and chapels so united, or of any other parsonage or vicarage with cure in the kingdom of England, or dominion of Wales, shall not amount to the full sum of one hundred pounds *per annum*, clear and above all charges and reprises, that then it shall be lawful for the parson, vicar, and incumbent of the same, and his successors, to take, receive, and purchase to him and his successors, lands, tenements, rents, tithes, or other hereditaments, without any license of mortmain; any law or statute to the contrary notwithstanding.

Parsons, vicars, &c. not having £100 *per annum* clear, may take, receive and purchase lands, tithes, &c. without such license.

22 Car. 2. c. 11. § 62—81.

1670.

An additional Act for the Re-building of the City of London, Uniting of Parishes, and Re-building of the Cathedral and parochial Churches within the said City.

62. **A**ND whereas by a late act of this present parliament, intituled, "An Act for Re-building the City of London," it was enacted, that the parishes to be re-built within the said city of London, in lieu of those which were demolished by the late dreadful fire, should not exceed the number of thirty-nine; but forasmuch as upon an exact survey taken of the number of houses to be re-built, and of the extent of the respective parishes necessary to be settled and continued within the said city, it does appear that the parishes to be settled and continued, and the parish churches to be re-built within the said city of London, in lieu of those demolished and consumed by the said late fire, cannot conveniently by union, or otherwise, be reduced to a less number than fifty-one; be it further enacted by the authority aforesaid, that the number of parishes to be settled, and of parish churches to be re-built within the said city of London, shall be fifty-one; the aforesaid act, or any thing therein contained, to the contrary notwithstanding.

The number of parishes and churches to be settled and rebuilt.

63. And that the fifty-one parishes so to be continued, as hereafter followeth, that is to say, Allhallows, Lombard-street, St. Bartholomew, Exchange, St. Bridget, alias Brides, St. Bennets Fink, St. Michaels, Crooked-lane, St. Christophers, St. Dionis Back Church, St. Dunstons in the East, St. James, Garlick-hithe, St. Michael, Cornhill, St. Bassishaw, St. Margaret, Lothbury, St.

The names of the parishes.

1670.

St. Mary, Aldermanbury, St. Martin, Ludgate, St. Peters, Cornhill, St. Stephens, Coleman-street, and St. Sepulchres, shall remain and continue as heretofore they were : and that the respective parish churches to each of the said parishes belonging, shall be re-built and continued for the use of the said parishes, and that the several parishes hereafter mentioned shall be respectively united into one parish, in manner hereafter following, that is to say, the parishes of Allhallows, Bread-street, and St. John Evangelist, shall be united into one parish, and the church heretofore belonging to the said parish of St. Allhallows, Bread-street, shall be re-built, and shall be the parish church of the said parishes so united ; the parishes of Allhallows the Great and Allhallows the Less, shall be united into one parish, and the church heretofore belonging to the said parish of Allhallows the Great, shall be the parish church of the said parishes so united ; the parishes of St. Albans, Wood-street, and St. Olaves, Silver-street, shall be united into one parish, and the church heretofore belonging to the said parish of St. Albans, Wood-street, shall be the parish church of the said parishes so united ; the parishes of St. Anne and Agnes, and St. John Zachary, shall be united into one parish, and the church heretofore belonging to the said parish of St. Anne and Agnes shall be the parish church of the said parishes so united ; the parishes of St. Austins and St. Faiths, shall be united into one parish, and the church heretofore belonging to the said parish of St. Austins shall be the parish church of the said parishes so united ; the parishes of St. Andrew Wardrobe and St. Anne, Blackfriars, shall be united into one parish, and the church heretofore belonging to the said parish of St. Andrew Wardrobe, shall be the parish church of the said parishes so united ; the parishes of St. Antholins and St. John Baptist, shall be united into one parish, and the church heretofore belonging to the said parish of St. Antholins, shall be the parish church of the said parishes so united ; the parishes of St. Bennet, Gracechurch, and St. Leonard, Eastcheap, shall be united into one parish, and the church heretofore belonging to the said parish of St. Bennet, Gracechurch, shall be the parish church of the said parishes so united ; the parishes of St. Bennet, Paul's-wharf, and St. Peter, Paul's-wharf, shall be united into one parish, and the church heretofore belonging to the said parish of St. Bennet, Paul's-wharf, shall be the parish church of the said parishes so united ; the parishes of Christchurch, and St. Leonard, Foster-lane, shall be united into one parish, and the church heretofore belonging to the said parish of Christchurch, shall be the parish church of the said parishes so united ; the parishes of St. Edmond the King, and St. Nicholas Acons, shall be united into one parish, and the church heretofore belonging to the said parish of St. Edmond the King shall be the parish church of the said parishes so united ; the parishes of St. George, Botolph-lane, and St. Botolph, Billingsgate, shall be united into one parish, and the church heretofore belonging to the said parish of St. George, Botolph-lane, shall be the parish church of the said parishes so united ; the parishes of St. Lawrence Jury, and St. Magdalens, Milk-street, shall be united into one parish, and the church heretofore belonging to the said parish of St. Lawrence Jury shall be the parish church of the said parishes so united ; the parishes of St. Magnus and St. Margaret, New Fish-street, shall be united into one parish, and the church heretofore belonging to the parish of St. Magnus shall be the parish church of the said parishes so united ; the parishes of St. Michael Royal and St. Martins Vintry shall be united into one parish, and the church heretofore belonging to the said parish of St. Michael Royal shall be the parish church of the said parishes so united ; the parishes of St. Matthew, Friday-street, and St. Peterscheap, shall be united into one parish, and the church heretofore belonging to the said parish of St. Matthew, Friday-street, shall be the parish church of the said parishes so united ; the parishes of St. Margaret Pattens and St. Gabriel, Fenchurch, shall be united into one parish, and the church heretofore belonging to the said parish of St. Margaret Pattens shall be the parish church of the said parishes so united ; the parishes of St. Mary Atthill and St. Andrew, Hubbard, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Atthill

Atthill shall be the parish church of the said parishes so united ; the parishes of St. Mary Wolnoth and St. Mary Woolchurch shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Wolnoth shall be the parish church of the said parishes so united ; the parishes of St. Clement, Eastcheap, and St. Martins Orgars, shall be united into one parish, and the church heretofore belonging to the said parish of St. Clement, Eastcheap, shall be the parish church of the said parishes so united ; the parishes of St. Mary Abchurch and St. Lawrence Poultny shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Abchurch, shall be the parish church of the said parishes so united ; the parishes of St. Mary Aldermay and St. Thomas Apostle, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Aldermay shall be the parish church of the said parishes so united ; the parishes of St. Mary-le-Bow, St. Pancras, Soaper-lane, and Alhallows, Honey-lane, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary-le-Bow shall be the parish church of the said parishes so united ; the parishes of St. Mildreds, Poultry, and St. Mary Colechurch, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mildreds, Poultry, shall be the parish church of the said parishes so united ; the parishes of St. Michael, Wood-street, and St. Mary Staining, shall be united into one parish, and the church heretofore belonging to the said parish of St. Michael, Wood-street, shall be the parish church of the said parishes so united ; the parishes of St. Mildred, Bread-street, and St. Margaret Moses, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mildred, Bread-street, shall be the parish church of the parishes so united ; the parishes of St. Michael, Queen-hithe, and Trinity, shall be united into one parish, and the church hitherto belonging to the said parish of St. Michael, Queen-hithe, shall be the parish church of the said parishes so united ; the parishes of St. Mary Magdalen, Old Fish-street, and St. Gregories, shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Magdalen, Old Fish-street, shall be the parish church of the parishes so united ; the parishes of St. Mary Somerset and St. Mary Munthaw shall be united into one parish, and the church heretofore belonging to the said parish of St. Mary Somerset shall be the parish church of the parishes so united ; the parishes of St. Nicholas Cole-abbey and St. Nicholas Olaves, shall be united into one parish, and the church heretofore belonging to the said parish of St. Nicholas Cole-abbey, shall be the parish church of the said parishes so united ; the parishes of St. Olaves Jewry and St. Martins Pomroy, alias Ironmonger-lane, shall be united into one parish, and the church heretofore belonging to the said parish of St. Olaves Jewry shall be the parish church of the said parishes so united ; the parishes of St. Stephen, Walbrook, and St. Bennet Sherhog shall be united into one parish, and the church heretofore belonging to the said parish of St. Stephen Walbrook, shall be the parish church of the said parishes so united ; the parishes of St. Swithin and St. Mary Bothaw, shall be united into one parish, and the church heretofore belonging to the said parish of St. Swithin shall be the parish church of the said parishes so united ; the parishes of St. Vedast, alias St. Fosters, and St. Michael Quern, shall be united into one parish, and the church heretofore belonging to the said parish of St. Vedast, alias St. Fosters, shall be the parish church of the said parishes so united.

64. And it is hereby further enacted and declared, that the said respective churches to be rebuilt within the said city of London and liberties thereof, shall be built and erected according to such models, and of such dimensions, and in such manner and form in all respects, as by the said Lord Archbishop of Canterbury, Lord Bishop of London, and Lord Mayor of London for the time being, (with his Majesty's approbation thereof) shall be directed and appointed. And the said respective parishes herein before-mentioned and appointed to be united, as aforesaid, shall for ever hereafter remain and continue so united and consolidated and annexed unto the several and respective parish churches by this act appointed to be re-built, as aforesaid : and the re-

1670.

spective parishioners, and the inhabitants of the said several parishes so to be united, as aforesaid, by force of the present act, shall hereafter resort to the said churches respectively, as to their proper parish church; and all tithes and other duties heretofore due and payable to the respective incumbents of the said parish churches respectively, shall hereafter be paid and payable to the incumbent of that church only, which by this act is appointed to be rebuilt and established for the parish church of the parishes so united, as aforesaid.

65. And be it further enacted, that all plate and goods heretofore belonging to any of the churchwardens of any of the parishes of those parishes burnt down, which are not now to be re-built for the use of the said churches, shall be enjoyed by the respective churchwardens and their successors of the respective parishes of such churches to be re-built respectively, whereunto the said other churches burnt down, are united by this act, to the use of the said churches and parishes respectively.

66. Provided always, that the sites of the churches to be demolished, and the churchyards belonging to the same, shall be inclosed with brick or stone-walls for burial for the parishes formerly belonging to the same, and the parishes to which they are respectively united, as aforesaid, and not used or employed for any other purpose whatsoever; excepting such of the sites and churchyards, or parts of sites and churchyards of the said parish churches so demolished, as aforesaid, as are already laid into the streets and market-places so set out for that purpose, or such other as shall within two years next following be thought fit by the mayor and aldermen, of the said city, with the consent of the Lord Archbishop of Canterbury, and Lord Bishop of London, and by his Majesty's approbation, to be laid into the streets and markets for enlargement and accommodation thereof, or for public store places.

67. Provided always, that where any part of the churches or churchyards of any of the said parish churches hereby appointed to be re-built and continued, have been thought fit by the mayor and court of aldermen of the said city, to be laid into any of the streets within the said enlargements thereof, and by order of the said mayor and court of aldermen shall have been, before the five-and-twentieth day of March, one thousand six hundred and seventy, staked and set out accordingly; it is hereby further enacted and declared, that the grounds so staked out shall be made use of for the enlarging of the said streets, according as the same were for that purpose staked and set out, as aforesaid; this present act, or any thing therein contained to the contrary notwithstanding.

68. Provided always, and it is hereby enacted and declared, that notwithstanding such union, as aforesaid, each and every of the parishes so united, as to all rates, taxes, parochial rights, charges, and duties, and all other privileges, liberties, and respects whatsoever, other than what are herein before mentioned and specified, shall continue and remain distinct, and as heretofore they were, before the making of this present act: and that the several and respective patrons of the said churches so united, shall and may present by turns to that church only which by this act is appointed to be rebuilt and established for the parish church of the parishes so united, as aforesaid; the first presentment to be made by the patron of such of the said churches, the endowments whereof are of the greatest yearly value.

69. Provided always, and it is hereby declared, that this act, or any thing therein contained, shall not extend to be construed to deprive the present incumbents, which at the time of the said late fire, were or now are in possession of any of the said parish churches not to be rebuilt, or any of them, of the tithes or other profits heretofore belonging to their respective churches, so long as they shall assist in serving the cure, and other offices belonging to their duty in the parish church whereunto their respective parishes shall be united and annexed by virtue of this act, according to the directions of the ordinary; any thing in this present act contained to the contrary notwithstanding: saving to the King's Majesty, his heirs and successors, the tenth and first-fruits of all such parish churches as by force of this present act shall be united and consolidated, as aforesaid, according to such rates and valuations

as the same do respectively stand rated and valued at, in his Majesty's court of first-fruits and tenths; any thing in this present act notwithstanding: saving also to all other person and persons, bodies politic and corporate, ecclesiastical and civil, their heirs and successors, all pensions, annuities, and payments whatsoever, heretofore due from, and payable by any rectors, vicars, and curates of any of the said churches united or consolidated, as aforesaid; any thing in this present act notwithstanding.

70. Provided always, that it shall and may be lawful to and for the warden, and minor canons of St. Paul's church, London, parson and proprietors of the rectory of the parish of St. Gregories aforesaid, to receive and enjoy all tithes, oblations, and duties, arising or growing due within the said parish, in as large and beneficial manner as formerly they have, or lawfully might have done; any thing herein to the contrary notwithstanding.

71. And whereas the wardens and commonalty of the mystery of the mercers of the city of London, at the time of the said fire, were seised in fee of the rectory and parish church impropriate of St. Mary Colechurch, (the said church being an upper room about ten foot higher than the street, and lying over certain rooms and arched vaults or cellars of the said wardens and commonalty) upon the site of which church they have designed to build a free-school, and other buildings conformable to the rules of the said former act, and to remove the dead bodies and bones of such as have been buried upon the arches, and to cause them to be decently reposed within the body of their chapel, commonly called Mercers-Chapel; be it therefore hereby enacted; that the site of the said parish church, and the materials thereof remaining upon the said site, be and are hereby settled upon the said wardens and commonalty, and their successors for ever: and that the said wardens and commonalty shall pay to the lord mayor and aldermen of the city of London for the same, such sum of money towards the rebuilding of the church whereunto the same is by this act appointed to be united, as shall be agreed upon between the said lord mayor and aldermen, and the said wardens and commonalty, or be assessed by a jury impanelled and sworn, as by the said former act is directed in any other case; any thing in this act to the contrary notwithstanding.

72. And whereas several parish churches, chancels, parsonage and vicarage-houses were consumed in the late dismal fire; to the end therefore the incumbents, parsons, and vicars may not be liable to the rebuilding of their chancels, parsonage and vicarage-houses, nor to be sued for dilapidations; be it enacted by the authority aforesaid, that the incumbents, parsons and vicars of the aforesaid churches, their executors and administrators, shall be, and are hereby indemnified, as to the rebuilding of their respective chancels, parsonage and vicarage-houses, and shall not be liable to any suits, troubles, or molestations that may arise for dilapidations aforesaid; and that no process shall be issued out of any court whatsoever, against the persons aforesaid, for their not rebuilding their respective chancels, and parsonage and vicarage-houses; any law or statute to the contrary in any wise notwithstanding.

73. And whereas first-fruits, tenths, and several pensions are from the said parsons and vicars to be yearly paid to his Majesty, and several duties to the ordinary and archdeacon, that his Majesty will be graciously pleased, that it may be enacted; and be it further enacted by the authority aforesaid, that the said parsons and vicars be indemnified, and are hereby indemnified from the payment of all first-fruits, tenths, and pensions due, and which shall be due to his Majesty; and from all dues to the ordinary and archdeacon, and all other dues whatsoever chargeable upon them respectively, until such time as they shall receive the profits arising from the same, as formerly; and that no process shall be issued out of any court whatsoever, against the persons aforesaid, for their non-payment of first-fruits, tenths, pensions, or any other the dues aforesaid; any law or statute to the contrary in any wise notwithstanding.

74. And whereas divers ministers have been already since the fire, and may be from time to time presented and instituted; and being so, are liable to the

1670.

forfeitures of their several livings for not reading the thirty-nine articles, and for not doing other things enjoined by law, in their several parish churches; be it enacted by the authority aforesaid, that all such ministers as have been, or shall be from time to time presented and instituted since the said fire, be, and are hereby indemnified from the several penalties and forfeitures incurred, and to be incurred by, or for not reading the thirty-nine articles, or not doing other things enjoined by law, as aforesaid, until such time as the said several churches be re-edified, or made fit for public worship.

75. And whereas the said parsons and vicars, or some of them, are interested in several glebe lands or grounds, the which they cannot rebuild themselves, nor let such lease or leases as may be an encouragement for others to rebuild the same; be it enacted by the authority aforesaid, that the said parsons and vicars, and every of them respectively, be empowered, and are hereby empowered to let such lease or leases of their said glebe lands or grounds, with the consent and approbation of the patron or patrons and ordinary, for any term not exceeding forty years, and at such yearly rents, without fine, as can be obtained for the same; and that no lapses incurred upon any non-presentation in due time of any of the patrons of the said livings since the said fire, shall any ways prejudice or make void the presentations that the said patrons have since made, whereupon any incumbent is since instituted and inducted: any law or statute to the contrary in any wise notwithstanding.

76. Provided always, and it is hereby declared and enacted, that if the mayor and commonalty and citizens of the said city of London shall be concerned in estate or title in any controversy or difference, whereof the determination is by this, or the aforesaid act, referred to the hearing and judgment of the said mayor and court of aldermen; that then, and in every such case, the justices of the court of King's bench and common pleas, and the barons of the coif of the exchequer for the time being, or any three or more of them, upon complaint to them made, shall be, and are hereby authorized to hear, and finally order and determine the same; any thing in this, or the aforesaid act, to the contrary notwithstanding.

77. Provided always, and be it enacted, and the lord mayor and court of aldermen are hereby authorized and required to cause to be made two posterns, one on either side of the gate commonly called Ludgate, for the better ease and convenience of foot passengers, and in order hereunto are also empowered to enlarge the said gate as they shall find cause.

78. And whereas by the said act for the rebuilding the city of London, it was enacted, that where any ground formerly built upon (the houses whereupon built were demolished at the time of the said late fire) should not within three years then next ensuing be rebuilt upon, then after proclamation publicly made, and inquiry and valuation made and taken of the ground whereupon such houses were situate, by inquest of a jury, in such sort and manner as in and by the said act is mentioned and appointed, the said mayor and aldermen, and common council might make sale thereof: it is hereby declared and enacted, that the said mayor, aldermen, and common council shall not, by virtue of the said act, proceed to the sale of any such ground or soil whereupon any such houses were situate, for not rebuilding thereupon, before the four-and-twentieth day of March, which shall be in the year of our Lord one thousand six hundred and seventy-one; nor shall any ground be sold by virtue of this or the aforesaid act, in case any person for the making of any court, yard, garden, or other easement, shall leave some part of the ancient foundation unbuilt upon backwards.

79. And be it further enacted and declared, that all persons seised or interested of any house or houses burned or demolished by reason of the said late fire, in tail for life or lives, or years determinable upon life, with remainder to their heirs or issue, male or female, or to their first or other son or sons, daughter or daughters in tail, or other like estate; that it shall and may be lawful to and for such tenant in tail for life or years with such remainder, as aforesaid, by indenture under their respective hands and seals, to demise the ground or soil of such burnt or demolished houses, without any fine or fines,
and

and at the most improved annual rent, to any person or persons, that shall or will rebuild thereupon for any term of years, not exceeding fifty years; which leases so made shall bind and conclude, as well all and every the heirs and issue of such tenant in tail, as the first and every other son and sons, daughter or daughters, or other issue of such tenant for life or years, as those in reversion or remainder; and the houses thereupon built shall be held and enjoyed by the respective lessees thereof, and their assigns, (paying the said rent to the persons in reversion or remainder during the term, and according to the purport of such leases) by virtue of this present act.

80. Provided always, and be it farther enacted by the authority aforesaid, that as to the house called Serjeant's Inn, in Fleet-street, of which the society of judges and serjeants at law were tenants at the time of the late fire, and many years before; that the King's most excellent Majesty, his heirs and successors, and his or their privy council, shall be, and are hereby empowered to hear and determine all differences and demands whatsoever touching the said house with the appurtenances, and all things also to do relating to the rebuilding thereof; and to make orders and decrees concerning the same, as fully to all intents and purposes, as the judges of the court of King's bench and common pleas, and barons of the exchequer might, could, or may do concerning any other houses burnt down by the late fire, by virtue of this and the said former act, or either of them. And his said Majesty and council are hereby also empowered to order and decree such satisfaction and recompense unto Robert Mellish, of the Inner Temple, Esquire, as to them shall seem just and reasonable; and to order and decree one lease of the premises, whereof the inheritance belongeth to the dean and chapter of York, not exceeding in the whole sixty years, for the use of the said society; and the said dean and chapter, and their successors, are hereby enabled and enjoined to make accordingly: and what shall be so ordered or decreed by his said Majesty and council, as aforesaid, shall be good and effectual in law to all intents and purposes by virtue of this act; and the said judges and barons of the exchequer are hereby excluded from making any order or decree touching the said house with the appurtenances.

22 & 23 Car. 2. c. 15.

An Act for the better Settlement of the Maintenance of the Parsons, Vicars, and Curates, in the Parishes of the City of London burnt by the late dreadful Fire there.

WHEREAS the tithes in the city of London were levied and paid with great inequality, and are, since the late dreadful fire there, in the rebuilding of the same, by taking away of some houses, altering the foundations of many, and the new erecting of others, so disordered, that in case they should not for the time to come be reduced to a certainty, many controversies and suits of law might thence arise; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, that the annual certain tithes of all and every parish and parishes within the said city of London and the liberties thereof, whose churches have been demolished, or in part consumed by the late fire, and which said parishes by virtue of an act of this present parliament, intituled, "An additional Act for the Rebuilding of the City of London, Uniting of Parishes, and Rebuilding of the Cathedral and Parochial Churches within the said City," remain and continue single, as heretofore they were, or are by the said act annexed or united into one parish respectively, shall be as followeth; (that is to say) the annual certain tithes, or sum of money in lieu of tithes,

Of the parish of Allhallows,	Of St. Bennet Fink	£ 100
Lombard-street	St. Michael, Crooked-lane . . .	100
St. Bartholomews, Exchange . . .	St. Christopher	120
St. Bridget, alias Brides	St. Dionis Backchurch	120
	Of	

1670.

Of St. Dunstan in the East . . .	£200	Of St. Matthew, Friday-street,	
St. James, Garlick-hythe . . .	100	and St. Peter, Cheap . . .	£150
St. Michael, Cornhill . . .	140	St. Margaret, Pattons, and	
St. Michael, Bassishaw . . .	132: 11	St. Gabriel, Fenchurch . . .	120
St. Margaret, Lothbury . . .	100	St. Mary at Hill, and St. An-	
St. Mary, Aldermanbury . . .	150	drew Hubbard . . .	200
St. Martin, Ludgate . . .	160	St. Mary Woolnoth, and St.	
St. Peter, Cornhill . . .	110	Mary Wool-church . . .	160
St. Stephen, Coleman-street	110	St. Clement, Eastcheap, and	
St. Sepulchre . . .	200	St. Martin, Orgars . . .	140
Allhallows, Bread-street, and		St. Mary Ab-church, and St.	
St. John the Evangelist . . .	140	Lawrence, Pountney . . .	120
Allhallows the Great, and All-		St. Mary, Aldermay, and St.	
hallows the Less . . .	200	Thomas Apostles . . .	150
St. Alban, Wood-street, and		St. Mary le Bow, St. Pancras,	
St. Olaves, Silver-street . . .	170	Soper-lane, and Allhallows,	
St. Anne and Agnes, and St.		Honey-lane . . .	200
John Zachary . . .	140	St. Mildred, Poultry, and St.	
St. Augustine, and St. Faith	172	Mary, Cole-church . . .	170
St. Andrew, Wardrobe, and		St. Michael, Wood-street, and	
St. Anne, Blackfriars . . .	140	St. Mary, Staining . . .	100
St. Antholin, and St. John		St. Mildred, Bread-street, and	
Baptist . . .	120	St. Margaret Moses . . .	130
St. Bennet, Grace-church, and		St. Michael, Queenhyth, and	
St. Leonard, Eastcheap . . .	140	Trinity . . .	160
St. Bennet, Paul's-wharf, and		St. Magdalen, Old Fish-street,	
St. Peter, Paul's-wharf . . .	100	and St. Gregory . . .	120
Christ-church and St. Leonard		St. Mary Somerset, and St.	
Foster-lane . . .	200	Mary Mounthaw . . .	110
St. Edmond the King, and St.		St. Nicholas Cole-abbey, and	
Nicholas Acons . . .	180	St. Nicholas Olaves . . .	130
St. George, Botolph-lane, and		St. Olave, Jewry, and St.	
St. Botolph, Billingsgate . . .	180	Martin, Ironmonger-lane . . .	120
St. Lawrence, Jury, and St.		St. Stephen, Walbrook, and	
Magdalen, Milk-street . . .	120	St. Bennet, Sheerhogg . . .	100
St. Magnus, and St. Marga-		St. Swythin, and St. Mary	
ret, New Fish-street . . .	170	Bothaw . . .	140
St. Michael, Royal, and St.		St. Vedast, <i>alias</i> Fosters, and	
Mary, Vintry . . .	140	St. Michael Quern . . .	160

3. Which respective sums of money to be paid in lieu of tithes within the said respective parishes; and assessed as herein after is directed, shall be, and continue to be esteemed, deemed, and taken to all intents and purposes, to be the respective certain annual maintenance (over and above glebes and perquisites, gifts and bequests to the respective parson, vicar and curate of any parish for the time being, or to his or their respective successors, or to other persons for his or their use) of the said respective parsons, vicars and curates, who shall be legally instituted, inducted and admitted into the respective parishes aforesaid.

4. And that the said several sums of money for tithes, may be more equally assessed upon the several houses, buildings, and all other hereditaments whatsoever, within all the said respective parishes; be it enacted by the authority aforesaid, that the alderman of such respective ward or wards within the said city, wherein any of the said parishes respectively lie, and his or their deputy or deputies, and the common councilmen of such respective ward or wards, with the churchwardens, and one or more of the parishioners of such respective parish, wherein the maintenance aforesaid is respectively to be assessed, to be nominated by such respective alderman, deputy, common councilmen, and churchwardens, or any five of them, whereof the alderman or his deputy to be one, shall at some convenient and seasonable time before the twentieth day of May, in

in the year of our Lord God one thousand six hundred and seventy-one, assemble and meet together in some convenient place within every of the respective parishes, in such respective ward wherein the maintenance aforesaid is to be assessed; and they, or the major part of them so assembled, shall proportionably assess upon all houses, shops, warehouses and cellars, wharfs, keys, cranes, water-houses, (which water-houses shall pay in their respective parishes where they stand, and not elsewhere,) and tofts of ground (remaining unbuilt) and all other hereditaments whatsoever (except parsonage and vicarage-houses) the whole respective sum by this act appointed, or so much of it as is more than what each impropiator is by this act enjoined respectively to allow, in the most equal way that the said assessors according to the best of their judgments can make it; which said assessments shall be made and finished before the four-and-twentieth day of July then next ensuing.

5. And be it further enacted by the authority aforesaid, that if any variance or doubt shall happen or arise about any sum so assessed, as aforesaid, or that any parishioner or parishioners, or owner or owners of any house, shop, warehouse or cellar, wharf, key, crane, water-house, toft of ground, or other hereditament within any of the said parishes, shall find himself or themselves aggrieved by the assessing of any sum or sums of money, in manner and form aforesaid, that then upon complaint made by the party or parties aggrieved, to the lord-mayor and court of aldermen of the said city, within fourteen days after notice given to the party or parties assessed, of such assessment made, the said lord-mayor and court of aldermen summoning as well the party or parties aggrieved, as the alderman and such others as made the said assessment, shall hear and determine the same in a summary way, and the judgment by them given shall be final, and without appeal.

6. Provided always, and be it enacted, that any assessment or rate to be made or laid by virtue of this act, shall or may in all or any of the parishes aforesaid, in like manner, be reviewed, or altered, or laid again within three months after the twenty-fourth day of June, one thousand six hundred and seventy-four, according to the aforesaid rules, and any such assessment or rate, shall or may be again reviewed, or re-assessed within three months after the twenty-fourth day of June, in the year of our Lord one thousand six hundred and eighty-one; and that all and every such new assessment and rate shall be liable to the like appeals, as aforesaid, and shall be collected, levied and paid as any other assessment or rate mentioned in this act, may or ought to be.

7. And if the said alderman, deputy, common council-men, and parishioner or parishioners so appointed, as aforesaid, shall after summons and request made in that behalf unto them, by the lord-mayor and court of aldermen, or the incumbent or incumbents of any of the said respective parish or parishes, refuse and neglect to meet and make such assessments, as aforesaid, then it shall and may be lawful to and for such person or persons as shall be thereunto authorized and required by the said lord-mayor and court of aldermen, to make such assessment, as by the said aldermen, deputy, common council-men, churchwardens, parishioner or parishioners aforesaid, should or ought to have been made.

8. And be it further enacted by the authority aforesaid, that the said assessors within ten days after such assessments made, and the respective appeals (if any be) determined, shall make three transcripts thereof in parchment, containing the respective sums to be payable, or appointed to be paid out of all and every the premises within such respective parish, and subscribe the same under their hands; and within twenty days after such subscription, as aforesaid, one of the said transcripts shall be returned to the lord-mayor of the city of London, to be kept and preserved by the said lord-mayor, in and among the records of the said city, for a perpetual memorial thereof; and another of the said transcripts shall be returned into the registry of the lord bishop of London, to be kept and preserved, as aforesaid; and the other of the said transcripts shall remain and be kept in the vestry of such respective parish, for a perpetual memorial, as aforesaid.

9. And for the surer and better payment of the said respective sums of money so to be assessed and taxed towards the raising of the said maintenance
of

1670.

of the respective parsons, vicars and curates of the said respective parishes, as aforesaid; be it further enacted by the authority aforesaid, that all and every such respective sum and sums of money so to be assessed and taxed, as aforesaid, towards the raising of the said maintenance of the said respective parsons, vicars and curates of the said respective parishes, shall be paid to the said respective parsons, vicars and curates, and their successors respectively, at the four most usual feasts, (that is to say) at the Annunciation of the Blessed Virgin Mary, the Nativity of Saint John the Baptist, the Feast of Saint Michael the Archangel, and the Nativity of our Blessed Saviour, or within fourteen days after each of the feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time and times as the incumbent or incumbents of such respective parish shall begin to officiate or preach as incumbent or parson in the respective church belonging to such respective parish, or in some other convenient place or places in such respective parish or parishes, to be nominated or appointed by the lord bishop of London for the time being, or by the archbishop of Canterbury, in any place within his peculiars.

10. And in any parish or parishes where any impropriations be, be it enacted by the authority aforesaid, that all and every the impropriator or impropriators of any of the said parishes, shall pay and allow what really, and *bona fide*, they have used, and ought to pay and satisfy to the respective incumbent of such respective parish, at any time before the said late fire, and the same shall be esteemed and computed as part of the maintenance of such incumbent; notwithstanding this act, or any clause or matter or thing therein contained.

11. And be it further enacted by the authority aforesaid, that if any of the inhabitants in any respective parish or parishes, as aforesaid, shall, or do refuse or neglect to pay to the respective incumbents aforesaid, of any of the said respective parishes, any sum or sums of money to him respectively payable, or appointed to be paid by this act, or any part thereof, contrary to the true intent and meaning of this act, (being lawfully demanded at the house or houses, wharf, key, crane, cellar, or other premises whereout the same is payable) that then it shall and may be lawful to and for the lord-mayor of the city of London for the time being, upon oath to be made before him of such refusal or neglect, to give and grant outwarrants for the officer or person appointed to collect the same, with the assistance of a constable in the day-time, to levy the same tithes or sums of money so due, and in arrear and unpaid, by distress and sale of the goods of the party or parties so refusing or neglecting to pay, restoring to the owner or owners, the overplus of such goods, over and above the said arrears of the said monies so due and unpaid, and the reasonable charges of making such distress, which he is to deduct out of the monies raised by sale of such goods.

12. Provided always, and be it enacted, that in case the lord-mayor, or court of aldermen shall refuse or neglect to execute any of the respective powers to them by this act granted, or to perform all and every such thing relating either to the assessing or levying of the respective sums aforesaid, as they are by this act authorized and required to perform, that then it shall and may be lawful for the lord-chancellor, or lord-keeper of the great seal of England for the time being, or any two or more of the barons of his Majesty's court of exchequer, by warrant or warrants under his or their respective hands and seals, to do and perform what the said lord-mayor and court of aldermen, according to the true intent or meaning of this present act, might or ought to have done, and by such warrant either to empower any person or persons to make the respective assessment as aforesaid, or to authorize the respective officers or persons appointed to collect the sums aforesaid, to levy the same by distress and sale of the goods of any person or persons that shall refuse or neglect to pay the same, in manner and form aforesaid.

13. Provided always, and be it enacted, that where any of the parishes within the said city, have since the late fire, by death or otherwise, become vacant, the surviving or remaining incumbent of the other parish thereto united, or therewith consolidated, shall have and enjoy, and have like remedy to recover the tithes hereby settled to be paid, as if he had been actually presented, admitted,

mitted, instituted and inducted into both the said parishes, since the union and consolidation thereof.

1670.

14. Provided always, that no court or judge ecclesiastical or temporal shall hold plea of, or for any the sum or sums of money due and owing, or to be paid by virtue of this act, or any part thereof, other than the persons hereby authorized to have cognizance thereof: nor shall it be lawful to or for any parson, vicar, curate, or incumbent, to convent or sue any person or persons assessed, as aforesaid, and refusing or neglecting to pay the same in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act, for the hearing and determining of the same, in manner aforesaid.

15. Provided always, that it shall and may be lawful to and for the warden and minor canons of St. Paul's church, London, parson and proprietors of the rectory of the parish of St. Gregory, aforesaid, to receive and enjoy all tithes, oblations, and duties arising or growing due within the said parish, in as large and beneficial manner as formerly they have, or lawfully might have done; any thing herein to the contrary notwithstanding.

29 Car. 2. c. 8.

An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons, to small Vicarages and Curacies.

WHEREAS divers archbishops, bishops, deans and chapters, and other ecclesiastical persons, in obedience to his Majesty's letters, bearing date the first day of June, in the twelfth year of his said Majesty's reign, and out of a pious care to improve poor vicarages and curacies, where the endowment thereof was found too small to afford a competent maintenance to those that serve the cure, have since his Majesty's happy return, upon their renewing of leases of rectories, or tithes impropriate, or appropriate, made, or may hereafter make divers reservations beyond the ancient rent, to the intent the same should or might become payable to the said vicars or curates, in augmentation of their endowments, which have been for the most part enjoyed accordingly: but in regard that such reservations were not made to the vicars or curates; or if they were, no convenient remedy could be had by such vicars or curates for the recovery thereof, and they were not at the time thereof capable of taking any interest to their own use, whereby the said provisions will depend upon the good pleasure of the successors, and may in time be disappointed.

1676.

2. For the establishment thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, that all and every augmentation of what nature soever, granted, reserved or agreed to be made payable, or intended to be granted, reserved or made payable since the said first day of June, in the twelfth year of his said Majesty's reign, or which shall at any time hereafter be granted, reserved, or made payable to any vicar or curate, or reserved by way of increase of rent to the lessors, but intended to be to or for the use or benefit of any vicar or curate, by any archbishop, bishop, dean, provost, dean and chapter, archdeacon, prebendary, or other ecclesiastical corporation, person or persons whatsoever, so making the said reservation out of any rectory impropriate, or portion of tithes belonging to any archbishop, bishop, dean, provost, dean and chapter, or other ecclesiastical corporation, person or persons, shall be deemed and adjudged to continue, and be, and shall for ever hereafter continue and remain, as well during the continuance of the estate or term upon which the said augmentations were granted, reserved or agreed to be made payable, as afterwards, in whose hands soever the said rectories or portion of tithes shall be, or come; which rectories or portions of tithes shall be chargeable therewith, whether the same be reserved again, or not; and the said vicars and curates respectively are hereby adjudged to be in the actual possession thereof, for the use of themselves and their successors, and the same shall for ever hereafter be taken, received, and enjoyed by the said vicars and curates, and their successors, as well during

1676.

during the continuance of the term or estate upon which the said augmentations were granted, reserved or agreed to be made payable, as afterwards; and the said vicars and curates shall have remedy for the same, either by distress upon the rectories impropriate, or portions of tithes charged therewith, or by action of debt against that person who ought to have paid the same, his executors or administrators; any disability in the person or persons, bodies politic or corporate so granting, or any disability or incapacity in the vicars or curates, to whom, or to or for whose use or benefit the same are granted, or intended to be granted, the statute of mortmain, or any other law, custom, or other matter or thing whatsoever to the contrary notwithstanding.

3. Provided always, that no future augmentation be confirmed by virtue of this act, which shall exceed one moiety of the clear yearly value, above all reprises, of the rectory impropriate out of the which the same shall be granted or reserved.

4. And to the end the said vicars and curates may the better make appear the certainty of the said augmentations; be it enacted by the authority aforesaid, that every archbishop, bishop, dean and chapter respectively, on, or before the nine-and-twentieth day of September next coming, shall cause every lease or grant whereon any such augmentation is made to be fairly entered in a book of parchment, to be kept by their respective registers for that purpose. And every dean, archdeacon, prebendary, or other ecclesiastical person respectively, shall cause every lease or grant whereon any such augmentation has been made by himself, his predecessor or predecessors, to be entered in the said book, to be kept by the register of the bishop of the diocese; for the entering whereof no fee shall be paid, nor any thing demanded, save only a reasonable reward to the clerk for entering the same, not exceeding five shillings; which said entry being examined by the respective archbishop, bishop or dean, and by them respectively attested in the said book, to be a true copy of the original lease or grant, and that the augmentation in the same was intended for such use, shall be as a record; a true copy whereof, proved by witnesses to be a true copy, shall be deemed, taken, adjudged and expounded to be good and sufficient evidence in the law, whereupon the said vicars and curates respectively, shall and may by virtue of this act, from time to time, recover the benefit of such augmentation.

5. And be it further enacted by the authority aforesaid, that where any archbishop, bishop, dean and chapter, or any other ecclesiastical corporation or person whatsoever, upon the renewing or granting any lease or estate, have made any agreement for an augmentation for the vicar or curate, and such augmentation has for any time been accordingly paid, although the said agreement is not expressed or mentioned in the said lease or grant, every such ecclesiastical person shall cause the substance of such agreement to be entered in the said book, to remain for a memorial of it to perpetuity.

6. And be it further enacted, that such augmentation so entered, shall likewise continue, and be for ever hereafter good and available in the law, for the benefit of the vicar or curate for whom it was intended, and their successors, as well against the archbishop, bishop or other ecclesiastical corporation or person, who agreed for the same, and his and their successors, as against every other person enjoying the said rectories or portions of tithes intended to be charged therewith, in the same manner, and for which they shall have the same remedy as they should or ought to have by virtue of this act, if the same had been mentioned and reserved in and by the lease.

7. And if any question shall hereafter arise concerning the validity of such grants, or any other matter or thing in this act mentioned and contained, such favourable constructions, and such further remedy, if need be, shall be had and made for the benefit of the vicars and curates, as heretofore has been had and made, or may be had for other charitable uses upon the statutes for charitable uses.

8. Provided always, and be it further enacted by the authority aforesaid, that if upon the surrender, expiration or other determination of any lease wherein any such augmentation, as aforesaid, has been or shall be granted, any new lease

lease of the premises, or any part thereof shall hereafter be made, without express continuance of the said augmentation, every such new lease shall be utterly void to all intents and purposes.

1676.

9. Provided always, that this act, or any thing therein contained, shall not extend, or to be construed to invalidate, alter or make void one lease, bearing date the nineteenth of October, one thousand six hundred and seventy-six, made by the dean and chapter of York, of the parsonage and tithes of Stourton in the county of Nottingham, wherein there is an augmentation of six-and-thirty pounds *per annum* reserved, and made due and payable to the vicar of Stourton aforesaid, but that the said sum of six-and-thirty pounds be always paid to the vicar and his successors accordingly; any thing in this act contained to the contrary in anywise notwithstanding.

10. Provided, that this act, or any thing therein contained, shall not extend, or be construed to invalidate, alter or make void one lease lately made by the dean and chapter of Exon, unto Arthur Sprey, esq.; of the tithe-sheaf of the parish of St. Evall in the county of Cornwall, whereon there is an augmentation of twenty pounds *per annum* already made due and payable to the vicar of the said parish during the said lease, but that the said sum of twenty pounds be always paid to the vicar and his successors accordingly; any thing in this act contained to the contrary in anywise notwithstanding.

1 W. & M. c. 16.

An Act that the Simoniacal Promotion of one Person may not prejudice another.

WHEREAS it has often happened that persons simoniac or simoniacally promoted to benefices or ecclesiastical livings, have enjoyed the benefit of such livings, many years, and sometimes all their lifetime, by reason of the secret carriage of such simoniacal dealing; and after the death of such simoniac person, another person innocent of such crime, and worthy of such preferment, being presented or promoted by another patron innocent also of that simoniacal contract, has been troubled and removed upon pretence of lapse (or otherwise) to the prejudice of the innocent patron in reversion, and of his clerk, whereby the guilty go away with the profit of his crime, and the innocent succeeding patron and his clerk are punished contrary to all reason and good conscience.

1688.

2. For prevention whereof, Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the death of the person so simoniacally promoted, the offence or contract of simony shall neither by way of title in pleading, or in evidence to a jury, or otherwise, hereafter be alleged or pleaded, to the prejudice of any other patron innocent of simony, or of his clerk by him presented or promoted, upon pretence of lapse to the crown, metropolitan, or otherwise, unless the person simoniac or simoniacally presented, or his patron, was convicted of such offence at the common law, or some ecclesiastical court, in the lifetime of the person simoniac or simoniacally promoted or presented; any law or statute to the contrary notwithstanding.

3. And be it also provided, enacted, and declared by the authority aforesaid, that no lease or leases, really and *bona fide* made, or hereafter to be made, by any such person as aforesaid, simoniac or simoniacally promoted to any deanery, prebend, or parsonage, or other ecclesiastical benefice or dignity, for good and valuable consideration, to any tenant or person not being privy unto, or having notice of such simony, shall be impeached or avoided for or by reason of such simony, but shall be good and effectual in law, the said simony notwithstanding.

1688.

1 W. & M. Sess. 1. c. 18. s. 6.

An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws.

FORASMUCH as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties Protestant subjects in interest and affection,

(The several laws against dissenters repealed.)

S. 6. Provided always, that nothing herein contained shall be construed to exempt any of the persons aforesaid from the paying of tithes or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court, or elsewhere for the same.

3 W. & M. c. 3.

An Act for the better ascertaining the Tithes of Hemp and Flax.

WHEREAS the sowing of hemp and flax is and would be exceeding beneficial to England, by reason of the multitude of people that are and would be employed in the manufacture of those two materials, and therefore do justly deserve great encouragement: And whereas the manner of tithing hemp and flax is exceeding difficult, creating thereby many grievous, chargeable, and vexatious suits and animosities, between parsons, vicars, impropriators, and their parishioners, for remedying whereof:

Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords spiritual and temporal, and the Commons in this present parliament assembled, and by the authority of the same, That from and after the second day of February, which shall be in the year of our Lord one thousand six hundred ninety and one, all, and all manner of persons that shall sow or cause to be sown any hemp or flax, in any parish or place in the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, shall pay or cause to be paid to every parson, vicar, or impropriator of any such parish or place, yearly and every year, for each acre of hemp or flax so sown, pulled or drawn, a constant annual sum of money not exceeding four shillings, before the same be carried off the ground, and so proportionably for more or less ground so sown, and pulled, or drawn, as aforesaid; for the recovery of which sum or sums of money, the parson, vicar, or impropriator, shall have the common and usual remedy allowed of by the laws of England.

Provided, That this act, or any thing therein contained, shall not extend to charge any lands discharged by any *modus decimandi*, ancient composition, or otherwise discharged of tithes by law.

Provided, that this law shall continue for seven years, and to the end of the next session of parliament after the said seven years are expired.

4 & 5 W. & M. c. 6.

An Act to make Parishioners of the Church united Contributors to the Repairs and Ornaments of the Church to whom the Union is made.

WHEREAS by an act of Parliament made in the seventeenth year of the reign of King Charles II. of blessed memory, provision was made for the uniting churches in cities and towns corporate: And forasmuch as it is highly reasonable that parishes whose churches are demolished, and either before or afterward united to other churches, should be contributors towards the repairs and other parochial charges of such other church, to which by virtue of the said act they are united:

Therefore, be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That where any churches heretofore have been, or hereafter shall be
united

united by virtue of the said act, and one of the said churches so united was, at the time of such union, or shall afterwards be demolished, that in all such cases, as often as the church which was or shall be made the church presentative, and to which the union was or shall be made, shall be out of repair, or there shall be need of decent ornaments for the performance of divine service therein, that the parishioners of the parish, whose church shall then be down or demolished, shall bear and pay towards the charges of such repairs and decent ornaments, such share and proportion as the archbishop or bishop that shall make such union shall, by the same union, direct and appoint; and for want of such direction and appointment, then one-third part of such charges of the repairs and decent ornaments, which shall be made or provided; and the same shall be rated, taxed, and levied, and in default thereof such process and proceedings shall be had and made against him or them, as if it were for the reparation and finding of decent ornaments for their own parish church, if no such union had been made; any law, custom, usage, or opinion to the contrary heretofore notwithstanding.

7 & 8 W. 3. c. 6. continued for Seven Years by 10 & 11 W. 3. c. 15.
and made perpetual by 3 & 4 Anne, c. 18. s. 1.

An Act for the more easy Recovery of Small Tithes.

FOR the more easy and effectual recovery of small tithes, and the value of them, where the same shall be unduly subtracted and detained; where the same do not amount to above the yearly value of forty shillings from any one person; Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons shall henceforth well and truly set out and pay all and singular the tithes, commonly called small tithes, and compositions and agreements for the same, with all offerings, oblations, and obventions to the several rectors, vicars, and other persons, to whom they are or shall be due, in their several parishes within this kingdom of England, and dominion of Wales, and town of Berwick-upon-Tweed, according to the rights, customs, and prescriptions commonly used within the said parishes respectively; and if any person or persons shall hereafter subtract or withdraw, or any ways fail in the true payment of such small tithes, offerings, oblations, obventions, or compositions, as aforesaid, by the space of twenty days at most after demand thereof, then it shall and may be lawful for the person or persons, to whom the same shall be due, to make his or their complaint in writing unto two or more of his Majesty's justices of the peace within that county, riding, city, town corporate, place, or division, where the same shall grow due; neither of which justices of peace is to be patron of the church or chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations, obventions or compositions aforesaid.

2. And be it further enacted by the authority aforesaid, That if hereafter any suit or complaint shall be brought to two or more justices of the peace as aforesaid concerning small tithes, offerings, oblations, obventions, or compositions as aforesaid, the said justices are hereby authorised and required to summon in writing under their hands and seals, by reasonable warning, every such person or persons against whom any complaint shall be made as aforesaid; and after his or their appearance, or upon default of their appearance, the said warning or summons being proved before them upon oath, the said justices of peace, or any two or more of them, shall proceed to hear and determine the said complaint, and upon the proofs, evidences and testimonies, produced before them, shall, in writing under their hands and seals, adjudge the case, and give such reasonable allowance and compensation for such tithes, oblations and compositions, so subtracted or withheld, as they shall adjudge to be just and reasonable, and also such costs and charges, not exceeding ten shillings, as upon the merits of the cause shall appear just.

3. And be it further enacted, That if any person or persons shall refuse or neglect,

1696.

neglect, by the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall, by two or more justices of the peace, be adjudged as aforesaid, in every such case the constables and churchwardens of the said parish, or one of them, shall, by warrant under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting, as aforesaid, and after detaining them three days, in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distress, as the said justices shall think fit, and shall tender the overplus (if any be) to the owner.

4. Provided always and be it enacted, That it shall and may be lawful for all justices of peace, in the examination of all matters offered to them by this act, to administer an oath or oaths to any witness or witnesses, where the same shall be necessary for their information, and for the better discovery of the truth.

5. Provided also, and be it enacted, That this act or any thing herein contained, shall not extend to any tithes, oblations, payments, or obventions, within the city of London, or liberties thereof, nor to any other city or town corporate where the same are settled by any act of parliament in that case particularly made and provided.

6. Provided also, and be it enacted, That no complaint for or concerning any small tithes, offerings, oblations, obventions, or compositions, hereafter due, shall be heard and determined by any justices of the peace, by virtue of this act, unless the complaint shall be made within the space of two years next after the times that the same tithes, oblations, obventions, and compositions did become due or payable, any thing in this act contained to the contrary notwithstanding.

7. Provided also, and be it enacted, That any person finding him, her, or themselves aggrieved, by any judgment to be given by any two justices of the peace, shall and may appeal to the next general quarter sessions to be held for that county, riding, city, town corporate, or division, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to confirm the judgment given by the first two justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings, or judgment had, or to be had by virtue of this act, shall be removed or superseded by virtue of any writ of *certiorari*, or other writ, out of his Majesty's courts at Westminster, or any other court whatsoever, unless the title of such tithes, oblations, and obventions, shall be in question; any law, statute, custom, or usage to the contrary notwithstanding.

8. Provided always, and be it enacted, That where any person or persons complained of for subtracting or withholding any small tithes, or other duties aforesaid, shall before the justices of the peace to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement, or title, whereby he or she is or ought to be freed from payment of the said tithes or other dues in question, and deliver the same in writing to the said justices of the peace, subscribed by him or her, and shall then give to the party complaining reasonable and sufficient security, to the satisfaction of the said justices, to pay all such costs and damages, as upon a trial at law to be had for that purpose, in any of his Majesty's courts, having cognizance of that matter, shall be given against him, her, or them, in case the said prescription, composition, or *modus decimandi*, shall not upon the said trial be allowed,
that

that in that case the said justices of the peace shall forbear to give any judgment in the matter; and that then and in such case the person or persons so complaining shall and may be at liberty to prosecute such person or persons for their said subtraction in any other court or courts whatsoever, where he, she, or they might have sued before the making of this act; any thing in this act to the contrary notwithstanding.

9. And be it further enacted by the authority aforesaid, That every person and persons, who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justices of the peace out of sessions, for small tithes, oblations, obventions, or compositions, shall cause or procure the said judgment to be enrolled at the next general quarter sessions to be holden for the said county, city, riding or division; and the clerk of the peace for the said county, city, riding or division, is hereby required, upon tender thereof, to enrol the same; and that he shall not ask or receive for the enrolment of any one judgment any fee or reward exceeding one shilling; and that the judgment so enrolled, and satisfaction made by paying the same sum so adjudged, shall be a good bar to conclude the said rectors, vicars, and other persons, from any other remedy for the said small tithes, oblations, obventions, or compositions, for which the said judgment was obtained.

10. And be it further enacted by the authority aforesaid, That if any person or persons, against whom any such judgment or judgments shall be had, as aforesaid, shall remove out of the county, riding, city, or corporation, after judgment had, as aforesaid, and before the levying the sum or sums thereby adjudged to be levied, the justices of the peace who made the said judgment, or one of them, shall certify the same, under his or their hands and seals, to any justice of peace of such other county, riding, or place, wherein the said person or persons shall be inhabitants; which said justice is hereby authorised and required, by warrant under his hand and seal, to be directed to the constables or churchwardens of the place, or one of them, to levy the sum or sums so adjudged to be levied, as aforesaid, upon the goods and chattels of such person or persons, as fully as the said other justices might have done, if he, she, or they, had not removed as aforesaid; which shall be paid according to the said judgment.

11. Provided always, and be it enacted, That no vicar or other person shall have remedy to recover small tithes, or other dues aforesaid, which became or were due before the making of this act, unless complaint be made to the justices of the peace in form aforesaid, before the first day of October, which shall be in the year of our Lord one thousand six hundred and ninety-six.

12. And it is hereby declared and enacted, That the said justices of the peace, who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid.

13. Provided also, and be it further enacted, That if any person or persons shall be sued for any thing done in execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, that then in any of the said cases, such person or persons shall recover double costs.

14. Provided always, That any clerk, or other person or persons, who shall begin any suit for recovery of small tithes, oblations, or obventions, not exceeding the value of forty shillings, in his majesty's court of exchequer, or in any the ecclesiastical courts, shall have no benefit by this act, or any clause in it, for the same matter for which he or they have so sued.

15. Provided always and be it further enacted, That this act shall continue for the space of three years, and from thence to the end of the next session of parliament, and no longer.

1696.

7 & 8 W. 3. c. 34.

An Act that the solemn Affirmation and Declaration of the People called Quakers shall be accepted instead of an Oath in the usual form.

WHEREAS divers dissenters, commonly called Quakers, refusing to take an oath in courts of justice and other places, are frequently imprisoned and their estates sequestered by process of contempt issuing out of such courts, to the ruin of themselves and families: For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the fourth day of May, which shall be in the year of our Lord one thousand six hundred and ninety-six, every Quaker within this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, who shall be required upon any lawful occasion to take an oath in any case, where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration, in these words following, *viz.*

1. *A. B.*, do declare, in the presence of Almighty God, the witness of the truth of what I say.

2. Which said solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice, and other places, where by law an oath is required within this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, as if such Quaker had taken an oath in the usual form.

3. And be it further enacted by the authority aforesaid, That if any Quaker, making such solemn affirmation or declaration, shall be lawfully convicted, wilfully, falsely, and corruptly to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury, every such Quaker so offending shall incur the same penalties and forfeiture, as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury.

Quakers refusing to pay great or small tithes.

And whereas, by reason of a pretended scruple of conscience, Quakers do refuse to pay tithes and church-rates: be it enacted by the authority aforesaid, That where any Quaker shall refuse to pay or compound for his great or small tithes, or to pay any church-rates, it shall and may be lawful to and for the two next justices of peace of the same county (other than such justice of the peace as is patron of the church or chapel, whence the said tithes do or shall arise, or any ways interested in the said tithes) upon the complaint of any parson, vicar, farmer, or proprietor of tithes, churchwarden or churchwardens, who ought to have, receive, or collect the same, by warrant under their hands and seals, to convene before them such Quaker or Quakers neglecting or refusing to pay or compound for the same, and to examine upon oath (which oath the said justices are hereby empowered to administer) or in such manner as by this act is provided, the truth and justice of the said complaint, and to ascertain and state what is due and payable by such Quaker or Quakers to the party or parties complaining, and by order under their hands and seals, to direct and appoint the payment thereof, so as the sum ordered, as aforesaid, do not exceed ten pounds; and upon refusal by such Quaker or Quakers to pay according to such order, it shall and may be lawful to and for any one of the said justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, by distress and sale of goods of such offender, his executors or administrators, rendering only the overplus to him, her, or them, the necessary charges of distraining being thereout first deducted and allowed by the said justice; and any person finding him, her, or themselves aggrieved by any judgment given by such two justices of the peace, shall and may appeal to the next general quarter sessions to be held for the county, riding, city, liberty, or town corporate, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment,

ment, if they shall see cause; and if the justices then present, or the major part of them, shall find cause to continue the judgment given by the first two Justices of the Peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had by virtue of this act shall be removed or superseded by any writ of *certiorari*, or other writ out of his Majesty's court at Westminster, or any other court whatsoever, unless the title of such tithes shall be in question.

1696.

5. Provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined.

6. Provided, and be it enacted, that no quaker or reputed quaker shall by virtue of this act be qualified or permitted to give evidence in any criminal causes, or serve on any juries, or bear any office or place of profit in the government; any thing in this act contained to the contrary in any wise notwithstanding.

7. Provided that this act shall continue in force for the space of seven years, and from thence to the end of the next session of parliament, and no longer.

11 & 12 W. 3. c. 16.

1700.

An Act for the better ascertaining the Tithes of Hemp and Flax.

WHEREAS an act made in the third year of the reign of his Majesty and the late Queen, intituled, An Act for the better ascertaining the Tithes of Hemp and Flax, was made to continue but for seven years, and to the end of the next session of parliament after such term ended, and is now expired: and whereas the said act has by experience been found very useful and necessary; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the five and twentieth day of March, which shall be in the year of our Lord one thousand seven hundred, all and every person or persons who shall sow or cause to be sown any hemp or flax in any parish or place in the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, shall pay or cause to be paid to every parson, vicar, or impropriator of any such parish or place, yearly and every year, the sum of five shillings, and no more, for each acre of hemp and flax so sown, before the same be carried off the ground, and so proportionably for more or less ground so sown; for the recovery of which sum or sums of money, the parson, vicar, or impropriator, shall have the common and usual remedy allowed of by the laws of the land.

2. Provided, that this act, or any thing therein contained, shall not extend to charge any lands discharged by any *modus decimandi*, ancient composition, or otherwise discharged of tithes by law.

3. Provided always, that nothing herein contained shall extend or be construed to extend, to make any alteration in the right or manner of payment of tithes of flax and hemp to any ecclesiastical person, incumbent of any parsonage, vicarage, or curacy, or to any impropriator or body corporate, having or holding any impropriation, for such ground as has at any time since the second day of February, one thousand six hundred and eighty-four, and before the second day of February, one thousand six hundred and ninety-one, been sown with flax or hemp, and paid tithe in kind to such incumbent, impropriator, or body corporate respectively, but that the same shall continue and be payable and paid, as fully and in such manner as formerly; any thing in this act to the contrary notwithstanding.

4. Provided, that this law shall continue in force for seven years, to be accounted from the said five and twentieth day of March, and from thence to the end of the next sessions of parliament, and no longer. Made perpetual by 1 Geo. 1. stat. 2. c. 26. s. 2.

1703.

2 & 3 Anne, c. 11.

An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in perpetuity the Revenues of the First Fruits and Tenths; and also for enabling any other Persons to make grants for the same Purpose.

WHEREAS, at a parliament holden in the six and twentieth year of the reign of King Henry the Eighth, the first-fruits, revenues, and profits for one year, upon every nomination or appointment to any dignity, benefice, office, or promotion spiritual, within this realm, or elsewhere, within the said King's dominions; and also a perpetual yearly rent or pension, amounting to the value of the tenth part of all the revenues and profits belonging to any dignity, benefice or promotion spiritual whatsoever, within any diocese of this realm, or in Wales, were granted to the said King Henry the Eighth, his heirs and successors, and divers other statutes have since been made touching the first-fruits and annual tenths of the clergy, and the ordering thereof: And whereas a sufficient settled provision for the clergy, in many parts of this realm, hath never yet been made, by reason whereof divers mean and stipendiary preachers are in many places entertained to serve the cures, and officiate there; who depending for their necessary maintenance upon the good-will and liking of their hearers, have been and are thereby under temptation of too much complying and suiting their doctrines and teaching to the humours rather than the good of their hearers, which hath been a great occasion of faction and schism, and contempt of the ministry: And forasmuch as your Majesty, taking into your princely and serious consideration the mean and insufficient maintenance belonging to the clergy in divers parts of this your kingdom, has been most graciously pleased, out of your most religious and tender concern for the church of England (whereof your Majesty is the only supreme head on earth) and for the poor clergy thereof, not only to remit the arrears of your tenths due from your poor clergy, but also to declare unto your most dutiful and loyal commons your royal pleasure and pious desire, that the whole revenue arising from the first fruits and tenths of the clergy might be settled for a perpetual augmentation of the maintenance of the said clergy, in places where the same is not already sufficiently provided for: we your Majesty's most dutiful and loyal subjects, the Commons of England, in Parliament assembled, to the end that your Majesty's most gracious intentions may be made effectual, and that the church may receive so great and lasting an advantage from your Majesty's parting with so great a branch of your revenue, towards the better provision for the clergy not sufficiently provided for; and to the intent your Majesty's singular zeal for the support of the clergy, and the honour, interest, and the future security of the church, as by law established, may be perpetuated to all ages; do most humbly beseech your Majesty that it may be enacted: And be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the Queen's most excellent Majesty, by her letters-patent under the great seal of England, to incorporate such persons as her Majesty shall therein nominate or appoint, to be one body politic and corporate, to have a common seal and perpetual succession; and also at her Majesty's will and pleasure, by the same, or any other letters-patent, to grant, limit, or settle, to or upon the said corporation, and their successors for ever, all the revenues of first-fruits, and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, to be applied and disposed of, to and for the augmentation of the maintenance of such parsons, vicars, curates, and ministers, officiating in any church or chapel within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, where the liturgy and rites of the church of England, as now by law established, are or shall be used and observed, with such lawful powers, authorities, directions, limitations, and appointments, and under such rules and restrictions, and in such manner and form as shall be therein expressed; the statute made in the first year of his said

said Majesty's reign, intituled, "An Act for the better support of her Majesty's Household, and of the Honour and Dignity of the Crown," or any other law to the contrary in any wise notwithstanding.

2. Provided always, and it is hereby declared, That all and every the statutes and provisions, touching or concerning the ordering, levying, and true answering and payment, or qualification of the said first-fruits and tenths, or touching the charge, discharge, or alteration of them, or any of them, or any matter or thing relating thereunto, which were in force at the time of making this act, shall be, remain, and continue in their full force and effect, and be observed and put in due execution according to the tenors and purports of the same, and every of them, for such intent and purposes nevertheless, as shall be contained or directed in or by the said letters-patent.

3. Provided also, That this act, or any thing therein contained, shall not extend to avoid, or any way to impeach or affect any grant, exchange, alienation, or incumbrance, at any time heretofore made, of or upon the said revenues of first-fruits and tenths, or any part thereof: but that the same shall during the continuance of such grant, exchange, alienation, or incumbrance respectively, be and remain of and in such force and virtue, and no other, to all intents and purposes, as if this act had not been made.

4. And for the encouragement of such well-disposed persons as shall, by her Majesty's royal example, be moved to contribute to so pious and charitable a purpose, and that such their charity may be rightly applied; be it enacted by the authority aforesaid, That all and every person and persons, having in his or their own right, any estate or interest in possession, reversion, or contingency, of or in any lands, tenements or hereditaments, or any property of or in any goods or chattels, shall have full power, license, and authority, at his, her, and their will and pleasure, by deed enrolled, in such manner, and within such time, as is directed by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, for inrolment of bargains and sales, or by his, her, or their last-will or testament in writing, duly executed according to law, to give and grant to, and vest in the said corporation, and their successors, all such his, her, or their estate, interest, or property, in such lands, tenements, and hereditaments, goods and chattels, or any part or parts thereof, for and towards the augmentation of the maintenance of such ministers as aforesaid, officiating in such church or chapel where the liturgy and rites of the said church are or shall be so used or observed, as aforesaid, and having no settled competent provision belonging to the same, and to be for that purpose applied according to the will of the said benefactor, in and by such deed inrolled, or by such will or testament executed, as aforesaid, expressed: And in default of such direction, limitation, or appointment, in such manner as by her Majesty's letters-patent shall be directed or appointed, as aforesaid. And such corporation and their successors shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or aliene to the said corporation, any manors, lands, tenements, goods, or chattels, without any license or writ of *ad quod damnum*; the statute of mortmain, or any the statute or law to the contrary notwithstanding.

5. Provided always, That this act or any thing therein contained shall not extend to enable any person or persons, being within age, or of *non sane* memory, or women covert, without their husbands, to make any such gift, grant, or alienation; any thing in this act contained to the contrary in any wise notwithstanding.

6. And whereas four bonds for four half-yearly payments of the first-fruits, as the same are rated, and also a fifth bond for a further value or payment, in respect of the same first-fruits, have been required and taken from the clergy, to their great and unnecessary burden and grievance: for remedy thereof, Be it enacted and declared by the authority aforesaid, that from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and four, one bond only shall in such case be given or required for the four payments of the said first-fruits, which said first-fruits as well as the tenths payable by

1703.

the clergy, shall hereafter be answered and paid to them according to such rates and proportions only as the same have heretofore been usually rated and paid; and no such fifth bond already given, shall, from and after the said twenty-fifth of March, in the year one thousand seven hundred and four, be sued or recovered.

4 Anne, c. 27.

An Act for the Impropriate Tithes of St. Bridget, alias Bride's, London.

WHEREAS, the dean and chapter of the collegiate church of Saint Peter, Westminster, being seised in fee to them and their successors, of and in the impropriate rectory and tithes of the parish of Saint Bridget, alias Brides, in the city of London, did in the year of our Lord one thousand seven hundred and three, demise the same to Thomas Townley, gentleman, for twenty-one years, to commence from the twenty-third day of April, in the said year of our Lord, one thousand seven hundred and three.

And whereas, there have been great disputes and differences between the said Thomas Townley, and the parishioners, in relation to the tithes, or money in lieu of tithes, due and payable to the said dean and chapter, or their lessees, from the respective parishioners of the said parish; and many suits have thereupon been commenced and prosecuted, and are still depending: for the ending which said suits and differences, all the parties concerned are come to an agreement, which said agreement cannot be rendered effectual without the aid of an act of parliament.

May it therefore please your most excellent Majesty, at the humble suit and request, as well of the said dean and chapter, and the said Thomas Townley, their lessee, as of the churchwardens, inhabitants, and parishioners of the said parish, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons assembled in parliament, and by the authority of the same, That the parishioners of the said parish for the time being, shall by the churchwardens, or such other person or persons, as they shall especially appoint and empower for that purpose, well and truly pay, or cause to be paid, unto the said Thomas Townley, his executors, administrators, or assigns, during the continuance of the said lease, and afterwards to the said dean and chapter, their successors and assigns, or their lessees, for ever, the full sum of four hundred pounds *per annum*, free from all manner of taxes, assessments, and deductions whatsoever, at four of the most usual feasts, or days of payment in the year, that is to say, at the feast of Saint John the Baptist, Saint Michael the Archangel, the birth of our Lord Christ, and the Annunciation of the blessed Virgin Mary, by even and equal portions: The first of the said payments to begin and be made upon the feast of Saint John the Baptist, in the year of our Lord one thousand seven hundred and six; which said yearly sum of four hundred pounds shall be, and is hereby declared to be, in lieu and in full satisfaction of, and for all tithes, dues, and payments whatsoever, hereafter to grow due and payable to the said impropriators, or their lessee or lessees, by the owners and occupiers of houses, shops, warehouses, cellars, stables, tofts of ground, or other tenements or hereditaments whatsoever, within the said parish.

And whereas, at the feast of the annunciation of the blessed Virgin Mary, in the year of our Lord one thousand seven hundred and six, there will be three years tithes or duties due to the said Thomas Townley, from the parishioners of the said parish: be it therefore enacted by the authority aforesaid; That there shall be paid to the said Thomas Townley, his executors or administrators by the parishioners of the said parish for the time being, by the churchwardens, or such other person or persons as they shall especially appoint and empower for that purpose, the full sum of one thousand two hundred pounds, within the space of two years from the first day of April one thousand seven hundred and six, by eight equal and successive quarterly payments; each of the said payments to be made on the aforesaid feast-days, the first to become payable on the first of the

the feast-days aforesaid; which said one thousand two hundred pounds, so to be paid, shall be, and is hereby enacted and declared to be in lieu and full discharge of and for the said three years tithes and duties so in arrear, and of and for all costs, charges, and demands which the said Thomas Townley now hath against the inhabitants of the said parish, or any or either of them, for or in lieu of tithes, or for or in respect of any suit commenced, or decree had against them or any or either of them, in the court of Exchequer, or elsewhere. And be it further enacted by the authority aforesaid, That if default shall happen to be made in payment of the said yearly sum of four hundred pounds, or of the said one thousand two hundred pounds, or of either of them, or of any part of them, or either of them for the space of forty days next after any of the said respective feasts or days of payment, on which the same ought respectively to be paid as aforesaid; then and in such case after a legal demand, and upon oath thereof made before the Lord Chief Baron of the court of Exchequer, or one other of the barons of the said court, or before the Lord Mayor of the city of London, or any justice of the peace of the said city, (which said oath all or any of the persons last recited, are hereby empowered and required from time to time to administer concerning any of the abovesaid payments being in arrear) it shall and may be lawful to and for such person or persons, before whom such oath shall be taken, from time to time to summon and send for the churchwarden or churchwardens of the said parish of St. Bride's, and such other person or persons as he or they shall think fit, and by oath or such other lawful ways or means as he or they shall think proper to inquire into the reason and cause of such default; and after such inquiry had and made as aforesaid, that the churchwarden or churchwardens of the said parish shall have received any monies arising by any the collections made on the inhabitants of the said parish as hereinafter mentioned; and shall have neglected or refused to have paid over the same to the said dean and chapter, their lessee or assigns, that then also it shall and may be lawful to and for the said persons or any of them before whom oath shall be made, as aforesaid, concerning any of the said payments being in arrear, to grant one or more warrant or warrants, under his or their hands and seals, to make distress or distresses on the goods and chattels of such churchwarden or churchwardens for such sum or sums of money as shall be found in his or their hands, and to make sale of the said goods and chattels, rendering the overplus to the owner thereof; after deduction of reasonable charges for levying the same. And for want of such distress, to grant one or more warrant or warrants, for the imprisoning the churchwarden or churchwardens offending therein, till payment shall be made of what monies shall be by them so received as aforesaid: And in case such distress to be taken, as aforesaid, shall not be sufficient to pay and satisfy the monies due, and for which such distress shall be so made, or that the said churchwarden or churchwardens shall be committed to prison, as aforesaid, and not satisfy the monies for which he shall stand so committed, within the space of ten days next after such his imprisonment; or in case the said duties shall not be assessed, nor the same, or any part thereof, collected or paid to the said churchwarden or churchwardens, that then and in any of the said cases, it shall and may be lawful to and for the said Thomas Townley, his executors, administrators, and assigns, during the continuance of his interest, and afterwards to and for the said dean and chapter, their successors, lessees, or assigns, from time to time, to distrain for all and every the said arrears upon all or any other goods or chattels of the said parishioners, and inhabitants, as they the said Thomas Townley, his executors, administrators, and assigns, during his interest, and afterwards the said dean and chapter, their successors, lessees, or assigns, shall think fit, and the goods or chattels of such person or persons so distrained, to keep, by the space of four days, at the costs of the owner or owners, who not paying the monies for which such distress shall be so made in the said four days, then the same to be appraised by two or more sufficient persons, and sold for the payment of the said money, and the overplus arising by such sale, over and above the reasonable charges of taking and keeping such distress, to be immediately returned to the owner or owners thereof.

Provided,

1703.

Provided, That no distress be made or taken at any one time for the said arrear, upon the goods or chattels of any person for more than the sum of five pounds, towards levying and raising the whole arrears. Provided always, that such payment arising by such distress or distresses on the goods or chattels of the said inhabitants, shall in no wise discharge the said imprisonment of any churchwarden, until payment or satisfaction made to a vestry of the said parish : which being made and paid accordingly, shall be applied in ease of the then next rate or assessment, and towards the discharge of the aforesaid yearly payment of four hundred pounds, to be rated and assessed on the inhabitants of the said parish, as hereinafter mentioned. Provided also that if the goods and chattels of any inhabitant or inhabitants shall be distrained by the said dean and chapter, or their lessees, for any arrears as aforesaid, the churchwardens of the said parish for the time being, shall satisfy such inhabitant or inhabitants the money for which his or their goods or chattels shall be so distrained, together with his and their charges, out of the first money that shall come to the hands of the said churchwardens, or either of them, arising by or from such rate or rates as is or are hereinafter mentioned. And to the end the parishioners of the said parish may be enabled to raise and pay the said yearly sum of four hundred pounds, and the said sum of one thousand two hundred pounds in manner aforesaid ; be it further enacted by the authority aforesaid, That it shall and may be lawful for the churchwardens of the said parish for the time being, and for nine other sufficient inhabitants of the said parish, (to be for that purpose yearly chosen on Thursday in Easter week, or within twenty days after, at and by a public vestry of the said parish) or the greater number of the said churchwardens and nine persons yearly and every year for ever, to make or cause to be made an equal assessment and pound-rate upon the inhabitants or occupiers of houses, shops, warehouses, cellars, stables, tofts, grounds, or other tenements or hereditaments within the said parish, according to the yearly value thereof, for the raising and paying the said sum of four hundred pounds per annum ; and also one or more the like proportionable assessment or assessments, equal pound-rate or rates upon all and every the person and persons who were inhabitants in the said parish, at any time during the said three years before mentioned, or are now inhabitants in the same, for raising and paying the said sum of one thousand two hundred pounds ; which said rates or assessments so to be made, as aforesaid, shall be approved and subscribed by the alderman of the ward, or any two justices of the peace for the said city of London. And being so approved and subscribed, the several and respective sums therein respectively rated and assessed, shall be collected and levied quarterly, at the four usual feasts or times in the year before mentioned, the first payment to begin and be made on the feast-day of Saint John the Baptist, which shall be in the said year of our Lord one thousand seven hundred and six, by such person and persons not exceeding the number of six persons, as are, or hereafter shall be liable to serve the office of overseer or collector for the poor of the said parish, as from time to time shall, by a vestry of the said parish, or the major part of them then present, be for that purpose yearly nominated and appointed.

And be it enacted by the authority aforesaid, That if any variance or doubt shall happen or arise about any sum so assessed, as aforesaid, or that any parishioner, occupier or owner of any house, shop, warehouse, cellar, stable, toft, ground, or other tenement or hereditament within the said parish, shall find him or themselves aggrieved by the assessing of any sum or sums of money in manner and form aforesaid, That then on complaint made by the party or parties aggrieved, to the alderman of the ward, or any two justices of the peace for the said city, within ten days after notice given, to the party or parties assessed of such assessments made or left at his or their abode, the said alderman, or any two justices of the peace, as aforesaid, summoning as well the party or parties aggrieved, as the churchwardens of the said parish, shall and have hereby power within five days after such complaint made, to hear and determine the same in a summary way, and the judgment by him or them given, shall be final.

And be it further enacted, That if any person, who shall be nominated and appointed

appointed to collect the said rate or rates, shall refuse to accept of, and execute the said office of collectors, or neglect the due execution thereof, it shall and may be lawful for the said vestry, or the major part of them then present, by whom he is so nominated and appointed, or any other vestry, or the major part of them then present, to impose a fine upon every such person so refusing or neglecting to serve, not exceeding the sum of four pounds; which said fine so to be imposed upon such person so refusing or neglecting to serve, shall be levied by distress and sale of the offender's goods and chattels, by warrant of two or more justices of the peace of the said city, rendering the overplus of the money arising by such sale, to the owner, and being levied and received, shall be applied towards the payment and discharge of the said yearly sum of four hundred pounds: And in case of such neglect or refusal, or in case of the death or failure of any such collector or collectors, or his or their removal out of the said parish, it shall and may be lawful for any vestry of the said parish, or the major part of them then present, to nominate and appoint such other person and persons as are or hereafter shall be liable to serve the office of overseer or collector for the poor of the said parish, as they shall think fit, to be collector or collectors in the place or places of such collector and collectors so refusing, neglecting, dying, failing or removing, which said new collector or collectors so to be new chosen shall be liable to the same fines for the non-performing of his or their duties, as by this act is imposed upon the preceding collector or collectors, in case of their refusal, or neglect of their duty, to be levied in like manner as aforesaid: And for the encouragement of persons to accept of the said office; be it enacted by the authority aforesaid, That every person so to be appointed collector of any the said rate and rates, and accepting and executing the said office, shall not be obliged to serve the said office for any longer time than for one year, and shall for ever after be discharged, and exempt of and from the office of overseer, or collector for the poor in the said parish.

And be it further enacted by the authority aforesaid, That every person so to be appointed collector of the said rates, shall quarterly or oftener, account for, and pay to the churchwardens of the said parish, all and every sum and sums of money, so from time to time received and collected by virtue of the said rate or rates; and in case any such collectors shall refuse or neglect quarterly or oftener, to account for, and pay to the said churchwardens the said monies so from time to time by him received, by virtue of the said rate or rates if thereunto required by the said churchwardens; then and in such case the like remedy shall and may be had and pursued by the said churchwardens, against such collector for what monies shall be so by him collected, and not accounted for and paid over to the said churchwardens, as the said dean and chapter, their lessee or lessees, can or may have by this act against the said churchwardens, for not paying what monies shall be by them or either of them received of any such collector or collectors as aforesaid. And in case any person or persons that shall be charged or assessed in the said rates or assessments, or any of them, shall refuse or neglect to pay the sum and sums of money, in and by such rate or rates, charged as aforesaid upon them, for the space of four days next after demand or notice given of the same, as before mentioned, then and in such case it shall and may be lawful to and for the collector or collectors of the said rates in the day-time to enter into the houses, shops, warehouses, tenements or other hereditaments of the person and persons so refusing, where-soever he or they shall live and inhabit, and to distrain any goods and chattels, in such houses, shops, warehouses, tenements or other hereditaments, and such distresses to take and carry away, and to sell and dispose thereof, for the best price that can be had for the same, and out of the monies arising by such sale, to pay and satisfy the money charged upon such person and persons, by such rate or rates, and the reasonable charges of making, keeping, and selling such distress and distresses, rendering the overplus to the owner and owners of the said goods so distrained.

Provided always, That in case the warden of the Fleet prison for the time being, shall not pay his proportion towards the tithes and dues payable by this act for the said prison; and if sufficient distress cannot be had or taken for the

1703.

the same, then it shall and may be lawful for any two justices of the peace for the city of London, to grant a warrant for committing the said warden to the common jail of the said city, there to remain till payment thereof; which said warrant and warrants such justices as aforesaid, from time to time, are hereby required to grant accordingly.

And be it further enacted by the authority aforesaid, That if by reason of the death or decay of any of the inhabitants, or occupiers of any houses, shops, warehouses, cellars, stables, tofts, ground-tenements, or other hereditaments within the said parish, or otherwise, howsoever any deficiency shall happen, in any or either of the said rates, by means whereof the aforesaid sum of four hundred pounds *per annum*, and one thousand two hundred pounds, so to be rated and assessed, cannot be raised, Then and in such case, the same shall be re-assessed or added to the next succeeding assessment, and be therewith re-assessed, collected, levied, and raised in such manner as the said other rates and assessments hereinbefore mentioned, are appointed to be levied, collected, and raised.

And be it enacted by the authority aforesaid, That the parsonage house and garden, and the glebe belonging to the impropiators of the said rectory, or the said Thomas Townley, and all messuages, edifices, and buildings, erected and built upon the same, and all, and every the inhabitants and occupiers thereof, shall be and are hereby exempt, and discharged of and from paying and contributing any sum of money whatsoever towards the said yearly sum of four hundred pounds, or the said twelve hundred pounds.

And be it enacted by the authority aforesaid, That the inhabitants of the said parish of St. Bride's, shall from time to time, and as often as there shall be occasion, repair the chancel of the said parish-church; and for, and in lieu of the charges and expenses of repairing thereof, shall from time to time for ever hereafter, have and receive all the profits and advantages whatsoever, which shall be had and received by the burials in the said chancel, and all other profits and advantages which shall be had, made or received of, or by the said chancel, or any part thereof, customary dues payable to the vicar of the said parish only excepted.

Provided always, and be it enacted by the authority aforesaid, That nothing in this act shall extend, or be construed to take away, or in anywise to impeach, or lessen the payment of the yearly sum of sixty pounds, due and payable by the inhabitants of the said parish, to their vicar: or that the said yearly sum be construed or taken to be any part of the said yearly sum of four hundred pounds: but that the said yearly sum of sixty pounds shall be continued to be paid to the vicar of the said parish, and his successors, in such manner, and at such times as the same is, and usually hath been paid, any thing herein contained to the contrary notwithstanding.

And be it further enacted by the authority aforesaid, That if any action, plaint, snit, or information shall be commenced or prosecuted against any person or persons, for what he or they shall do in pursuance or execution of this act, such person or persons so sued, may plead the general issue: and upon any issue joined, give this act, and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him, the defendant shall recover treble costs, for which they shall have the like remedy, as in any case where costs by law are given to defendants.

And be it further enacted, that this act shall be taken and allowed in all courts within this kingdom, as a public act; and all judges and justices are hereby required as such to take notice thereof, without special pleading the same.

5 Anne, c. 24.

1704.

An Act for discharging small Livings from their First-Fruits and Tenths, and all Arrears thereof.

WHEREAS pursuant to an act of parliament made in the second year of her Majesty's reign, intituled, "An Act for the making more effectual her Majesty's gracious intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First-Fruits and Tenths, and also for enabling any other Persons to make Grants for the same Purpose;" the Queen's most excellent Majesty, by letters-patent, bearing date the third day of November, in the third year of her Majesty's reign, did make, appoint, nominate, constitute and establish certain persons and officers therein named, to be one body politic and corporate, by the name of the 'Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy,' and did thereby give and grant to the said governors all the revenues of first-fruits and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, payable to her Majesty, her heirs and successors, by virtue of an act of parliament made in the twenty-sixth year of the reign of King Henry the Eighth, or by virtue of an act of parliament made in the first year of the reign of the late Queen Elizabeth, for restitution of first-fruits and tenths to the crown, or by virtue of any other act or acts of parliament whatsoever, and all arrears of the said first-fruits and tenths then due and undischarged (except as therein is excepted) to be applied and disposed of to and for the augmentation of the maintenance of such parsons, vicars, curates, and ministers, officiating in any church or chapel within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, where the liturgy and rites of the church of England, as now by law established, shall be used and observed, under such rules, restrictions, and directions, and in such manner and form, as should be established pursuant to those letters-patent: and whereas it is thought that the payment of first-fruits and tenths for small livings with cure of souls, is a very heavy burden upon the poorer clergy, for whom her Majesty's unparalleled bounty was designed; and that the immediate discharging of the said first-fruits and tenths and the arrears thereof, of the said small livings, will be a present proper augmentation of the same (several whereof by reason of the said charges are now held in sequestration by temporary curates, without being regularly filled with institution and induction). Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all ecclesiastical benefices with cure of souls, not exceeding the clear yearly value of fifty pounds by the improved valuations of the same, (the tenths whereof are by the said recited charter vested in the said corporation) and the incumbents thereof for the time being, and every of them, their respective heirs, executors, administrators, successors, and sureties, shall be free and clearly discharged and acquitted for ever of and from the said first-fruits and tenths, and of and from all arrears of the same.

2. And for the ascertaining of the clear improved yearly valuation of the said ecclesiastical benefices with cure of souls, intended by this act to be discharged from payment of first-fruits and tenths; be it further enacted by the authority aforesaid, That the respective bishops of every diocese, or the guardians of the spiritualities *sede vacante*, and the ordinaries of peculiars, and places of exempt jurisdiction, shall and are hereby empowered and required, as well by oaths of two or more credible witnesses, (which they or others duly commissioned by them, under their hands and seal, are hereby impowered to administer) as by all other lawful ways and means, to inform themselves of the clear improved yearly value of every benefice with cure of souls, within their respective dioceses and jurisdictions, the clear improved yearly value whereof doth not exceed fifty pounds, and on or before the five-and-twentieth day of March, which shall be in the year of our Lord one thousand seven hundred and eight, under their respective hands and seals, or seals of their respective officers, to certify into her Majesty's court of exchequer at Westminster, the clear improved yearly value
of

1704.

of every such benefice with cure of souls, the clear improved yearly value whereof doth not exceed fifty pounds; and such certificate being made, and filed in the said court of exchequer, shall ascertain the clear yearly value of the benefice with cure of souls, intended by this act to be discharged from first-fruits and tenths.

3. Provided always, and it is hereby declared, That this act or any thing herein contained, shall not extend to discharge any benefices with cure of souls, the tenths whereof were granted away by any of her Majesty's predecessors, to any person or persons, bodies politic or corporate, in perpetuity, before the said third day of November in the third year of her Majesty's reign.

4. And whereas the said former act was intended for the augmentation of the maintenance, not only of parsons and vicars, but also of curates, and other ministers officiating in churches or chapels, as is therein mentioned; now for the preventing all doubts touching the capacity of such ministers to take any certain estate to them and their successors, of or in any part or portion of the first-fruits and tenths, as shall to them be allotted or applied; be it enacted and declared by the authority aforesaid, That when any part or portion of the first-fruits or tenths remaining to be applied or disposed of by virtue of the said former act, shall be annually or otherwise applied or disposed of for or towards the maintenance of any minister officiating in any church or chapel as aforesaid, such part or portion shall from thenceforth for ever, be in like manner continued to the minister from time to time so officiating in the same church or chapel; and every such minister, whether parson, vicar, curate or other minister for the time being, so officiating in such church or chapel, shall and may from time to time take and receive, and by virtue hereof is and shall be intitled to have and enjoy the same for ever.

5. And be it further enacted and declared by the authority aforesaid, That this act shall be taken and accepted in all courts and places whatsoever, as a public act.

6. Provided nevertheless, That this act or any thing herein contained, shall not extend or be construed to extend to avoid or diminish any annual sum, stipend, pension, or annuity now in being, which hath heretofore been granted to any person or persons, body politic or corporate, and charged upon the said revenues of first-fruits and tenths, or any part thereof; but in case it shall so happen that by discharging such small livings or benefices with cure of souls, as afore mentioned, of the payment of first-fruits and tenths, and all arrears thereof, the first-fruits and tenths which hereafter shall be collected in any diocese or dioceses, shall not be sufficient to pay and satisfy such annual sums as they now stand respectively charged with, then the whole revenues arising from the first-fruits and tenths, throughout the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, shall be liable to make good all such deficiencies; and the said deficiencies shall out of the said revenues (during the continuance of such grants, from time to time as any such annual payments shall become due) be paid and satisfied to all such person and persons as shall in any wise be intitled to receive the same, in such proportions as are limited and appointed in such respective grants.

6 Anne, c. 27.

An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings, not exceeding the yearly Value of Fifty Pounds; as also for discharging all Livings of that value from the Payment of First-Fruits; and for allowing Time to Archbishops and Bishops, and other Dignitaries, for the Payment of their First-Fruits.

WHEREAS, by an act made in the fifth year of the reign of her present Majesty, intituled, "An Act for discharging small Livings from their First-Fruits and Tenths, and all Arrears thereof;" it is provided, That the said act, or any thing therein contained, shall not extend to discharge any benefices, with cure of souls, the tenths whereof were granted away by any of her Majesty's

Majesty's predecessors to any person or persons, bodies politic or corporate, in perpetuity, before the third day of November, in the third year of her Majesty's reign; which clause was intended only to save the rights of such persons who had grants of tenths from the crown before the said third day of November, and not otherwise: But forasmuch as the first-fruits of the aforesaid benefices, with cure of souls, the tenths whereof were so granted, as aforesaid, were, notwithstanding the said grants, reserved to the crown, and are now granted by her Majesty to the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, and their successors: and forasmuch as the discharging of the first-fruits and arrears thereof of small livings, the tenths of which are not invested in the said governors, will be a present proper augmentation of the same; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, That all ecclesiastical benefices with cure of souls, not exceeding the clear yearly value of fifty pounds by the improved valuations of the same, the tenths whereof are not vested in the corporation of the said governors, and the incumbents thereof for the time being, and every of them, their respective heirs, executors, administrators, successors, and sureties, shall be freely and clearly discharged and acquitted for ever of and from the said first-fruits, and of and from all arrears of the same: any thing in the aforesaid act to the contrary notwithstanding: and the ascertaining of the clear improved yearly valuations of the said ecclesiastical benefices with cure of souls, hereby intended to be discharged from the payment of first-fruits, shall be by the same persons, and in the same manner and form, as for other livings mentioned in the said act.

2. Provided nevertheless, That the certificates by the proper ordinaries into her Majesty's court of Exchequer at Westminster, of the yearly valuation of such livings intended by this act to be discharged from the payment of first-fruits, may be made at any time before the twenty-fourth day of December, which shall be in the year of our Lord one thousand seven hundred and eight; any thing herein to the contrary notwithstanding.

3. "And whereas by the said act of parliament made in the said fifth year of her Majesty's reign, the time limited for certifying into the court of Exchequer the valuation of such livings intended by the said act to be discharged from the payment of first-fruits and tenths, is found not sufficient with respect to some dioceses and places;" be it therefore enacted by the authority aforesaid, That such certificates which shall be made into the said court of Exchequer, of the yearly valuation of such livings intended to be discharged from the payment of first-fruits and tenths by the said act of parliament, at any time before the said twenty-fourth day of December which shall be in the year of our Lord one thousand seven hundred and eight, shall be as good and effectual for the purposes by the said act intended, as if the same were made and certified on or before the twenty-fifth day of March one thousand seven hundred and eight; any thing in this or the said act to the contrary thereof notwithstanding.

4. And be it further enacted and declared by the authority aforesaid, That this act shall be taken and accepted in all courts and places whatsoever as a public act.

5. "And whereas it has been usual for the kings and queens of England, by their letters of privy seal, to allow the archbishops and bishops four years time for the payment of their first-fruits to the crown, by way of instalment, which, since her Majesty has been graciously pleased to give the first-fruits and tenths for the maintenance of the poor clergy, cannot now be done: and whereas the first-fruits of archbishoprics and bishoprics amount to near the full annual value thereof, and the other charges of coming into archbishoprics and bishoprics are very great: and whereas archbishops and bishops have not the profits of their bishoprics from the death of their predecessors, as rectors and vicars have, but from the time that such bishoprics are conferred upon them: and whereas no provision has been made for any abatements of the first-fruits of archbishops or bishops, as there is for rectors and vicars, in case of death or removal

1707.

removal, within the times allowed for the payment of such first-fruits:" be it enacted by the authority aforesaid, That every archbishop and bishop shall have four years allowed him, when he or they shall compound for the same, for the payment of his first-fruits, which shall commence from the time of restitution of his temporalities; and that in every year he shall pay one-fourth part of the whole sum: and if it shall please God he shall die, or be removed, before the full term of four years shall be expired, he, his heirs, executors, or administrators, shall be discharged of so much as did not become due or payable at or before the time or times of his death or removal, in like manner as the heirs, executors, and administrators of rectors and vicars are authorised to do.

6. And be it further enacted by the authority aforesaid, That all deans, archdeacons, prebendaries, and other dignitaries, shall compound for their respective first-fruits, in such manner and form as rectors and vicars have been accustomed to do; and in case of death or removal within the time usually allowed to rectors and vicars for payment of their said first-fruits, they the said deans, archdeacons, prebendaries, and other dignitaries, shall be in the like condition, and have the same benefit as is allowed to rectors and vicars by the statute made in the first year of the reign of the late Queen Elizabeth, intituled, *An Act for the Restitution of the First Fruits to the Crown.*

6 Anne, cap. 28.

An Act for continuing the Act for ascertaining the Tithes of Hemp and Flax.

"**W**HEREAS an act of parliament made in the eleventh and twelfth years of the reign of his late Majesty King William the Third, of glorious memory, intituled, *An Act for the better ascertaining the Tithes of Hemp and Flax*, was to continue from the five and twentieth day of March which was in the year of our Lord one thousand seven hundred, and from thence to the end of the next session of parliament: and whereas the said act has by experience been found to be very useful and necessary to this kingdom;" be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said recited act shall be continued, and be in force from the five and twentieth day of March, which shall be in the year of our Lord one thousand seven hundred and eight, for seven years, and from thence to the end of the next session of parliament, and no longer.

1708.

7 Anne, cap. 18.

An Act to preserve the Rights of Patrons to Advowsons.

"**F**ORASMUCH as the pleading in a *quare impedit* is found very difficult, whereby many patrons are either defeated of their rights of presentation, or put to great charge and trouble to recover their right, which is occasioned by the law as it now is;" for remedy whereof, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That no usurpation upon any avoidance in any church, vicarage, or other ecclesiastical promotion, shall displace the estate or interest of any person entitled to the advowson or patronage thereof, or turn it to a right, but he or she that would have had a right, if no usurpation had been, may present or maintain his or her *quare impedit* upon the next, or any other avoidance, if disturbed, notwithstanding such usurpation: and if coparceners, or joint tenants, or tenants in common be seised of any estate of inheritance in the advowson of any church or vicarage, or other ecclesiastical promotion, and a partition is or shall be made between them to present by turns, that thereupon every one shall be taken and adjudged to be seised of his or her separate part of the advowson to present in his or her turn; as if there be

two,

two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn, the other of the other moiety to present in the second turn; in like manner, if there be three, four, or more, every one shall be said to be seised of his or her part, and to present in his or her turn.

1708.

12 Anne, st. 2. cap. 12.

1713.

An Act for the better Maintenance of Curates within the Church of England; and for preventing any Ecclesiastical Persons from buying the next Avoidance of any Church Preferment.

“**W**HEREAS the absence of beneficed ministers ought to be supplied by curates that are sufficient and licensed preachers, and no curates or ministers ought to serve in any place without the examination and admission of the bishop of the diocese, or ordinary of the place, having episcopal jurisdiction: but nevertheless, for want of sufficient maintenance and encouragement for such curates, the cures within that part of Great Britain called England, have been in several places meanly supplied:” for remedy whereof be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if any rector or vicar having cure of souls shall, from and after the nine and twentieth day of September, in the year of our Lord one thousand seven hundred and fourteen, nominate and present any curate to the bishop or ordinary, to be licensed or admitted to serve the cure of such rector or vicar in his absence, the said bishop or ordinary, having regard to the greatness of the cure, and the value of the ecclesiastical benefices of such rector or vicar, shall, on or before the granting such license, appoint by writing under his hand and seal a sufficient certain stipend or allowance, not exceeding fifty pounds *per annum*, nor less than twenty pounds *per annum*, to be paid or answered at such times as he shall think fit, by such rector or vicar, to such curate, for his support and maintenance; and if it shall appear to the bishop or ordinary, upon complaint or otherwise, that any curate of such rector or vicar, licensed or admitted before the said nine and twentieth day of September in the year of our Lord one thousand seven hundred and fourteen, hath not a sufficient maintenance, it shall be lawful to and for the said bishop or ordinary to appoint him a certain stipend or allowance in like manner as before mentioned; and in case any difference shall arise between any rector or vicar and his curate, touching such stipend or allowance, or the payment thereof, the bishop or ordinary, on complaint to him made, shall summarily hear and determine the same; and in case of neglect or refusal to pay such stipend or allowance, may sequester the profits of such benefice, for or until payment thereof.

2. “And whereas some of the clergy have procured preferments for themselves by buying ecclesiastical livings, and others have been thereby discouraged;” be it further enacted by the authority aforesaid, that if any person, from and after the twenty-ninth day of September one thousand seven hundred and fourteen, shall or do, for any sum of money, reward, gift, profit, or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, in his own name, or in the name of any other person or persons, take, procure, or accept the next avoidance of, or presentation to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, and shall be presented or collated thereupon, that then every such presentation or collation, and every admission, institution, investiture, and induction upon the same, shall be utterly void, frustrate, and of no effect in law, and such agreement shall be deemed and taken to be a simoniacal contract; and that it shall and may be lawful to and for the Queen’s Majesty, her heirs and successors, to present or collate unto, or give or bestow every such benefice, dignity, prebend, and living ecclesiastical, for that one time or turn only; and the person so corruptly taken, procuring, or accepting any such benefice,

1713.

benefice, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled person in law, to have and enjoy the same benefice, dignity, prebend, or living ecclesiastical, and shall also be subject to any punishment, pain or penalty, limited, prescribed, or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made after such benefice, dignity, prebend, or living ecclesiastical had become vacant; any law or statute to the contrary in anywise notwithstanding.

1714.

1 Geo. st. 2. c. 10.

An Act for making more effectual her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy.

1. **W**HEREAS it is necessary for the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, in order to the more regular making proper augmentations, to be informed, as exactly as may be, of the clear improved yearly value of the maintenance of all such parsons, vicars, curates and ministers, officiating in any church or chapel within that part of Great Britain called England, the dominion of Wales, or town of Berwick upon Tweed where the liturgy and rites of the church of England, as now by law established, are or shall be used and observed, whose maintenance is intended to be augmented: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present parliament assembled, and by the authority of the same, That the respective bishops of every diocese, and the guardians of the spiritualities *sede vacante*, shall be and are hereby impowered and required, from time to time, as they shall see occasion, and as may best serve the purposes of the said bounty to the poor clergy, as well by the oath of two or more credible witnesses (which they, or others commissioned by them under their hands and seals, are hereby impowered to administer), as by all other lawful ways and means, to inform themselves of the clear improved yearly value of every benefice with cure of souls, living and curacy, and of the true and clear improved yearly value of the maintenance of every parson, vicar, curate, and minister, officiating in any such churches or chapels, as aforesaid, within their several dioceses, or within any peculiars or places of exempt jurisdiction within the bounds and limits of their respective dioceses, or adjoining and contiguous thereunto, although the same be exempt from the jurisdiction of any bishop in other cases, and how such yearly values arise, with the other circumstances thereof, and the same, or such of them whereof they shall have fully informed themselves, from time to time, with all convenient speed, to certify under their respective hands and seal or seals of their respective offices, to the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, for their better information in the premises.

2. Provided always, and be it enacted by the authority aforesaid, That where by certificates duly returned into her Majesty's court of Exchequer at Westminster, pursuant to an act made in the parliament held in the fifth year of the reign of her said late Majesty, intituled, An Act for discharging small Livings from their First-fruits and Tenths, and all Arrears thereof, and one other act made in the sixth year of the reign of her said late Majesty, intituled, An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings, not exceeding the yearly Value of fifty Pounds; as also for discharging all Livings of that Value from the payment of First-fruits; and for allowing time to Archbishops and Bishops, and other Dignitaries, for payment of their First-fruits, or either of them, or made good by this Act, the yearly Value of any Livings, not exceeding the clear yearly value of fifty Pounds, are particularly and duly expressed and specified, such certificates shall ascertain the yearly values of such livings, in order to their being augmented by the said governors, and no new or different valuation thereof shall be returned to the said governors by virtue of this present act.

3. And whereas by her late Majesty's letters-patent under her great seal, bearing

1714.

‘ bearing date the third day of November, in the third year of her reign, incorporating the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, the said governors were authorised to consider, consult, advise, agree upon, draw up, prepare and propose in writing to her said Majesty, her heirs and successors, such proper and necessary rules, methods, directions, orders and constitutions, as the said governors, or any seven or more of them, with such quorum as is therein directed, should in their discretions judge most convenient to be observed, for and towards the better rule and government of the said corporation and the members thereof, and the receiving, accounting for, and managing all and every the revenues thereby granted, or mentioned to be granted, and all arrears thereof, and also for and concerning the distributing, paying, and disposing of the same, and all other gifts and benevolences that should or might be given or bequeathed to the said corporation for the charitable ends in the said letters-patent mentioned, for the augmentation of the maintenance of the poor clergy aforesaid; and such rules, methods, orders, directions and constitutions, as should be so proposed, and should be approved, altered or amended by her said late Majesty, her heirs or successors, and such as should be made by her said Majesty, her heirs and successors, and so signified and declared by her, her heirs or successors, under her or their great seal, her said late Majesty thereby willed should be the rules, methods, directions, orders, and constitutions, by which the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy and their successors, should receive, manage, govern, apply and dispose her said late Majesty’s royal bounty, and other gifts and benevolences which should or might after that time be given or bequeathed to the said corporation (where the donors thereof should not particularly direct the application thereof), to and for the increase of the maintenance of such parsons, vicars, curates and ministers officiating in any church or chapel within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, where the liturgy and rites of the church of England, as then by law established, were and should be used and observed, for whom a maintenance was not then sufficiently provided: And whereas, pursuant to the said letters-patent of incorporation, the said governors did agree upon, prepare, and propose to her said late Majesty, certain rules and constitutions for the better rule and government of the said corporation, and her said late Majesty, by letters-patent under her great seal, bearing date the fifth day of March, in the twelfth year of her reign, did establish the said rules and constitutions, reserving to herself, her heirs and successors, power, from time to time, under her or their great seal, to alter the same, and to give and make in like manner such other rules and constitutions, according to the true intention of the said letters-patent of incorporation, as to her said Majesty, her heirs or successors, should seem meet: And whereas a more expeditious and easy method of making and altering the rules and constitutions, for the better rule and government of the said corporation, may tend to the advancement of the said charity;’ Be it enacted and declared by the authority aforesaid, that all such rules, methods, orders, directions and constitutions, as shall, from time to time, be by the said governors agreed upon, prepared and proposed to his Majesty, his heirs and successors, according to the true intention of the said letters-patent of incorporation, and by his Majesty, his heirs and successors, approved under his or their sign manual, shall be as good, valid and effectual rules, methods, directions, orders and constitutions, for the purposes aforesaid, as if the same were made or established under the great seal of his Majesty, his heirs or successors.

‘ 4. And whereas her said late Majesty’s royal bounty to the poor clergy was intended to extend, not only to parsons and vicars who come in by presentation or collation, institution, and induction, but likewise to such ministers who come in by donation, or are only stipendiary preachers or curates, officiating in any church or chapel where the liturgy and rites of the Church of England is now by law established, are and shall be used and observed, most of which are not corporations, nor have a legal succession, and therefore are incapable of taking a grant or conveyance of such perpetual augmentation as

1714.

‘ as is agreeable to her said late Majesty’s gracious intentions, and in many
 ‘ places it would be in the power of the impropiator, donor, parson, or vicar,
 ‘ to withdraw the allowance now or heretofore paid to the curate or minister
 ‘ serving the cure, or, in case of a chapelry, the incumbent of the mother
 ‘ church might refuse to employ a curate, or permit a minister duly nominated
 ‘ or licensed to officiate in such augmented chapel, and might officiate there
 ‘ himself, and take the benefit of the augmentation, though his living be above
 ‘ the value of those which are intended to be first augmented; and the main-
 ‘ tenance of the curate or minister would thus be sunk instead of being aug-
 ‘ mented;’ Be it therefore enacted by the authority aforesaid, That all such
 churches, curacies, or chapels, which shall at any time hereafter be augmented
 by the governors of the bounty of Queen Anne for the augmentation of the
 maintenance of the poor clergy, shall be, and are hereby declared and esta-
 blished to be, from the time of such augmentations, perpetual cures and bene-
 fices, and the ministers duly nominated and licensed thereunto, and their suc-
 cessors respectively, shall be, and be esteemed in law, bodies politic and
 corporate, and shall have perpetual succession by such name and names as in
 the grant of such augmentation shall be mentioned, and shall have a legal
 capacity, and are hereby enabled to take, in perpetuity, to them and their suc-
 cessors, all such lands, tenements, tithes, and hereditaments, as shall be granted
 unto or purchased for them respectively by the said governors of the bounty of
 Queen Anne for the augmentation of the maintenance of the poor clergy, or
 other persons contributing with the said governors as benefactors; any law or
 statute to the contrary notwithstanding: And that the impropiators or patrons
 of any augmented churches or donatives, for the time being, and their heirs,
 and the rectors and vicars of the mother churches whereto any such augmented
 curacy or chapel doth appertain, and their successors, shall be and are hereby
 utterly excluded from having or receiving, directly or indirectly, any profit or
 benefit by such augmentation, and shall from time to time, and at all times,
 from and after such augmentation, pay and allow to the ministers officiating
 in any such augmented church and chapel respectively, such annual and other
 pensions, salaries, and allowances, which by ancient custom, or otherwise, of
 right, and not of bounty, ought to be by them respectively paid and allowed,
 and which they might, by due course of law, before the making of this act,
 have been compelled to pay or allow to the respective ministers officiating
 there, and such other yearly sum or allowance as shall be agreed upon (if any
 shall be) between the said governors and such patron or impropiator, upon
 making the augmentation, and the same are and shall be hereby perfectly vested
 in the ministers officiating in such augmented church or chapel respectively,
 and their respective successors.

5. Provided always, That no such rector or vicar of such mother church, or
 any other ecclesiastical person or persons, having cure of souls, within the
 parish or place where such augmented church or chapel shall be situate, or his
 or their successors, shall hereby be divested or discharged from the same; but
 the cure of souls, with all other parochial rights and duties (such augmentation
 and allowances to the augmented church or chapel, as aforesaid, only excepted)
 shall hereafter be and remain in the same state, plight, and manner, as before
 the making of this act, and as if this act had not been made.

‘ 6. And for continuing the succession in such augmented cures, hereby
 ‘ made perpetual cures and benefices, and that the same may be duly and con-
 ‘ stantly served:’ Be it enacted by the authority aforesaid, That in case such
 augmented cures be suffered to remain void by the space of six months, without
 any nomination within that time of a fit person to serve the same (by the
 person or persons having the right of nomination thereunto) to the bishop or
 other ordinary, within that time, to be licensed for that purpose, the same
 shall lapse to the bishop or other ordinary, and from him to the metropo-
 litan, and from the metropolitan to the crown, according to the course
 of law used in cases of presentative livings and benefices, and the right of
 nomination to such augmented cure may be granted or recovered, and
 the incumbency thereof may and shall cease and be determined, in like man-
 ner, and by the like methods, as the presentation to, or incumbency in any
 vicarage

vicarage presentative may be now respectively granted, recovered, or determined.

1714.

7. Provided always, That in case the person or persons entitled to nominate in such augmented cure shall suffer lapse to incur, but shall nominate before any advantage taken thereof by the ordinary, metropolitan, or crown, respectively, that such nomination shall be as effectual as if made within six months, although so much time be before elapsed, as that the title of lapse be vested in the crown.

8. And in as much as by the said rules established by her said late Majesty, under her great seal, for the management of the aforesaid royal bounty, her said late Majesty was pleased to manifest her gracious intentions to invite private contributions towards augmenting the maintenance of the poor clergy, by ordering, amongst other things, That to encourage benefactions from others, and thereby the sooner to complete the good that was intended by her said late Majesty's bounty, the said governors may give the sum of two hundred pounds (which is the stated sum allowed to each cure which shall be augmented) to cures not exceeding thirty-five pounds *per annum*, where any person or persons will give the same or greater sum or value in lands or tithes : And in as much as the right of presentation, or nomination to small livings, is of inconsiderable value, and yet it may be a great inducement to such benefactions, if the benefactors may have some right of presentation or nomination to the cure which himself contributes to augment ;' Be it therefore further enacted, That all agreements with such benefactor or benefactors, with the consent and approbation of the said governors, touching the patronage or right of presentation or nomination to any such augmented cure, made or to be made for the benefit of such benefactor and benefactors, his, her, or their heirs or successors, by the King's most Excellent Majesty, his heirs and successors, under his and their sign manual, or by any bodies politic or corporate, or by any person or persons being of the full age of twenty-one years, having an estate of inheritance either in fee-simple, or fee-tail, in their own right, or in the right of their churches, or wives, or jointly with their wives, made before coverture, or after, or having an estate for life, or for years determinable upon his and their own life and lives, with remainder in fee-simple or fee-tail to any issue of his or their own bodies, in such patronage, or right of presentation, or nomination in possession, reversion or remainder, shall be respectively good and effectual in the law against his Majesty, his heirs and successors, or against all and every such bodies politic and corporate, or against the persons so agreeing, their wives, heirs and successors respectively, and every of them, and against all and every their issue, and against every other person and persons claiming in remainder and reversion after such estate-tail, as aforesaid, according to the form of such agreement ; and the advowson, patronage, and right of presentation and nomination to such augmented churches and chapels shall be vested in such benefactors, their heirs and successors, as against his Majesty, his heirs and successors, or the said bodies politic and corporate, and their successors, or the said respective persons as aforesaid, as fully, and in like manner and form, as if the same had been granted by his said Majesty, his heirs or successors, under his and their great seal, and as if such bodies politic or corporate had been free from any restraint, and as if such other persons so agreeing had been sole seised in his and their own right of such advowson, patronage, right of presentation and nomination, in fee-simple, and had granted the same to such benefactors, their heirs and successors respectively, according to such agreements.

All agreements with benefactors touching the patronage of augmented cures, shall be good in law ;

and the advowson, &c. shall be vested in such benefactors.

9. And be it further enacted, That the agreements of guardians for and on behalf of infants or idiots under their guardianships, shall be as good and effectual to all intents and purposes, as if the said infants or idiots had been of full age, and of sound mind, and had themselves entered into such agreements.

Agreements of guardians shall bind infants, &c.

10. Provided always, That in case of any such agreement, as aforesaid, by any parson or vicar, the same shall be with the consent and approbation of his patron and ordinary.

11. Provided also, That in case of any such agreement, as aforesaid, made by

1714.

Such agreements shall be effectual for supplying vacant cures.

The estate settled for augmentation may be exchanged.

Augmented donatives to be visited by the bishop.

The governors may agree with the patron, &c. of any donative, &c. for an allowance to the minister of such augmented donative, &c.

And if such impropiator (other than the King) will not agree, the governors may refuse such augmentation.

The certificate for the diocese of Chichester, remaining in the Exchequer, shall be as effectual

by any person seised in right of his wife, the wife shall be a party to the agreement, and shall seal and execute the same.

‘ 12. And in as much as such benefactors are to be considered, in some degree, as founders and patrons of churches ;’ Be it further enacted, That such agreements so made, as aforesaid, shall be as effectual for the supplying cures vacant at the time of such augmentation made or proposed, as for the avowson or nomination to future vacancies.

13. And be it further enacted by the authority aforesaid, That it shall and may be lawful, with the concurrence of the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and the incumbent, patron, and ordinary of any augmented living or cure, to exchange all or any part of the estate settled for the augmentation thereof, for any other estate in lands or tithes, of equal or greater value, to be conveyed to the same uses.

14. And be it further enacted by the authority aforesaid, That all such donatives which are now exempt from all ecclesiastical jurisdiction, and shall be augmented by virtue of the powers given by this act, shall be subject to the visitation and jurisdiction of the bishop of the diocese wherein such donative is, to all intents and purposes of law whatsoever.

15. Provided always, That no donative shall be augmented without the consent of the patron or patrons in writing, under his or their hands and seals first had and obtained.

16. Provided also, That where it shall fall to the lot of any donative, curacy, or chapelry, to receive an augmentation from the said bounty, according to the rules already established, or hereafter to be established, it shall and may be lawful to and for the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and they are hereby empowered, before they make the same augmentation, to treat and agree with the patron of any donative, impropiator of any rectory impropriated without endowment of any vicarage, or parson or vicar of any mother church (as the case shall happen to be) for a perpetual yearly, or other payment or allowance to the minister or curate of such augmented donative, curacy, or chapelry, and his successors, to be made in all succeeding times by such patron, impropiator, parson or vicar, and his and their heirs and successors, and for charging and subjecting the impropriate rectory, or the mother church, or vicarage therewith, and thereunto, in such manner, and with such remedies as shall be thought fit ; and such agreements made with the King’s most excellent Majesty, his heirs and successors, under his or their sign manual, or with any bodies politic or corporate, or any other person or persons having any estate or interest, in possession, reversion, or remainder, in any such impropriate rectory in his or their own right, or in right of his or their churches or wives, or with the guardian or guardians of any person or persons having such estate or interest, or with any parson or vicar of any mother church, shall be as effectual to all intents and purposes, with respect to such charges, as agreements made with his Majesty, his heirs and successors, or with the same person or persons, bodies politic or corporate respectively, touching the patronage or right of presentation or nomination to the same cures, touching which such agreements shall be respectively made ; and in case such impropiator, other than the King’s Majesty, his heirs and successors, and such parson or vicar, will not or shall not make such agreement with the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy ; it shall and may be lawful to and for the said governors to refuse such augmentation, and to apply the money arising from the late Queen’s said bounty, which ought to have been employed therein, for augmenting some other cure, according to the rules then in force.

‘ 17. And whereas the before-mentioned acts of parliament, of the fifth and sixth years of the reign of her said late Majesty, were, for the diocese of Chichester, not executed in due time, and in many dioceses not with that exact certainty of the yearly values and distinction of medieties in the certificates, as regularly ought to have been ; and some small prebends in cathedral churches

‘ churches were, by reason of their being dignities, omitted in some certificates, although they have the cure of souls thereto annexed, and are therefore livings with cure of souls within the words and meaning of the said acts : For supplying the defects in the execution of the said former acts of parliament ;’ Be it enacted by the authority aforesaid, That the certificate for the diocese of Chichester, dated the twenty-fourth day of December, one thousand seven hundred and eight, which was received in the court of Exchequer at Westminster, and is now remaining there, shall be as effectual, to all intents and purposes, as if the same had been sealed and returned into the said court of Exchequer, within the times limited by the said respective acts of parliament in that behalf made ; and also that all and every the churches, vicarages and livings, in and by the said certificate, or in and by the certificates made and returned in due time, or any of them, certified to be under fifty pounds *per annum*, and each mediety therein, shall be entitled to and have the benefit of the said respective discharges by the said several acts of parliament, as fully, to all intents and purposes, as if the precise yearly value had been expressed, and the medieties distinguished in such certificate and certificates : And further, that it shall and may be lawful to and for the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, under their common seal, to be affixed at a court of the said governors, and under the hands of the governors then present, to certify into the court of Exchequer the names of such prebends in cathedral churches, under the yearly value of fifty pounds, the prebendaries whereof have the immediate cure of souls of the respective parishes whereof such prebends are denominated, although the same were not named in any former certificate ; and such certificate and certificates of the said governors, being returned into the said court of Exchequer, shall be as effectual to all intents and purposes of the said two before-mentioned acts of parliament, as if the prebends therein named had been duly certified within the times in the said acts limited, and by the persons, and in the manner therein directed.

1714.
as if it had been returned in due time.

And the governors may certify into the Exchequer the prebends under the yearly value of 50*l.* though not named in any former certificate.

‘ 18. And whereas notwithstanding the utmost diligence of the bishops to inform themselves of, and certify into his Majesty’s court of Exchequer, all the livings in their respective dioceses under the clear improved yearly value of fifty pounds, in pursuance of the said acts, the several livings within the respective dioceses hereafter named, though supposed to be under the value of fifty pounds *per annum*, have either not been certified, or if certified, the certificates of them have been lost, or not duly entered, or by some other mistakes it has so happened that the said livings have not yet had the benefit designed them by the said acts ;’ Be it further enacted by the authority aforesaid, That it shall and may be lawful for the bishops of the said dioceses, at any time before the twenty-fifth day of March, one thousand seven hundred and sixteen, to certify into the court of Exchequer the livings following, or such of them as shall appear to the respective bishops to be under the value of fifty pounds *per annum*, (*viz.*) in the diocese of York, the rectory of St. Michael apud Pontem de Ouze, in the city of York, the vicarage of Skipwith, the vicarage of Kilham, the vicarage of North Leverton, the vicarage of Norwell Overhall : in the diocese of Bangor, the vicarage of Lanunda, the vicarage of Llanfair Isgaer, the vicarage of Llanor, the vicarage of Nevin, the vicarage of Abererch, the vicarage of Conway, the vicarage of Dwygyfylche : in the diocese of Carlisle, the rectory of Kirkbride, the rectory of Dufton, the vicarage of Edenhall : in the diocese of Chichester, the vicarage of Sela, the rectory of Beatae Mariæ in Westout Lewis, the rectory of Chalton, the rectory of Winchelsea, the vicarage of Bernehill : in the diocese of St. David’s, the vicarage of Merchir, alias Mathre, the vicarage of St. Winnock, alias St. Twinnells : in the diocese of Litchfield and Coventry, the vicarage of Hartington, the vicarage of St. Mary’s in Litchfield, the South Mediety of Darleigh, the vicarage of Glossop : in the diocese of Lincoln, the rectory of Bellew, alias Hellow, the vicarage of Elsham, the rectory of Normanby, the rectory of Snarford, the vicarage of Buckingham, the rectory of Okeney, the vicarage of Mentmore, the vicarage of Missenden Magna, the vicarage of Swanburn : in the diocese

Livings not certified, which the bishops may certify before March 25, 1716.

1714.

and they shall have the benefit of the acts of 5 Ann. c. 24. and 6 Ann. c. 27.

The governors empowered to administer oaths.

Augmentations, &c. to be entered, and the entries to be taken as records; and attested copies thereof good evidence.

Lands, &c. allotted to any church, &c. by deed under the governors' seal, shall go in succession, &c.

such deed being inrolled in six months.

of Norwich, the vicarage of South Walsham, the rectory of Framlingham, the vicarage of Burnham Overy, the vicarage of Scarning, the vicarage of Nectons, the vicarage of Melton Parva, the rectory of Reepham Medietas *et altera* Medietas, the vicarage of Thurston, the vicarage of Colkirke, the rectory of Catfields, the vicarage of Henly, the rectory of Newborn, the rectory of Culpho, the rectory of Dunwich Johannis, the rectory of Pakefield, the rectory of Melford Longa, the vicarage of Finborow Parva, the rectory of Willingham, alias Ellough, the rectory of Bromeswell in Wilford: in the diocese of Oxford, the vicarage of Stanton Harcourt: in the diocese of Peterborough, the vicarage of Cransley: in the diocese of Winchester, the vicarage of Shalford, and the vicarage of Ellingham: and the said livings so certified shall have the benefit of the two forementioned acts of parliament, as effectually, to all intents and purposes, as if they had been duly certified within the time limited by the said acts.

19. And be it further enacted by the authority aforesaid, That the courts and committees of the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, shall have power and authority, and are hereby authorized and empowered, from time to time, to administer an oath to such person and persons as shall at any time give them information, or be examined of or concerning any matter or thing relating to the execution of this or the said former acts of parliament, or any way concerning the trust in them reposed.

20. And be it further enacted by the authority aforesaid, That all the augmentations, certificates, agreements, and exchanges hereafter to be made, by virtue of or in pursuance of this act, shall be carefully examined and entered in a book to be provided and kept by the governors for that purpose, the said entries being approved at a court of the said governors, and attested by the governors then present, shall be taken to be as records, and the true copies thereof, or of the said entries, being proved by one or more credible witnesses, shall be deemed, taken, and adjudged to be good and sufficient evidence in law, touching the matters contained therein, or relating thereto.

21. And to the end that churches and chapels may at all times be capable of receiving augmentations for the maintenance of the ministers thereof; Be it enacted by the authority aforesaid, That if the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, shall by any deed or instrument in writing under their common seal, allot or apply to any church or chapel, any lands, tithes, or hereditaments, arising from the said bounty of her said late Majesty, or from private contribution or benefaction, or from all or any the ways aforesaid, and shall declare, That the same shall be for ever annexed to such church or chapel, then such lands, tithes, and hereditaments, shall from thenceforth be held and enjoyed, and go in succession with such church and chapel for ever; and such augmentation so made shall be good and effectual, to all intents and purposes whatsoever, whether such church or chapel, for which such augmentation is intended, be then full or vacant of an incumbent or minister; provided such deed or instrument be inrolled in the High Court of Chancery within six months after the day of the date thereof. [*Vide infra* 3 Geo. 1. c. 10.]

1716.

3 Geo. c. 10.

An Act for the better Collecting and Levying the Revenue of the Tenths of the Clergy.

2 & 3 Ann. c. 11.
5 Ann. c. 24.
6 Ann. c. 27.
1 Geo. 1. c. 10.

1. **W**HEREAS her late most gracious Majesty Queen Anne, in her royal bounty to the poor clergy of the church of England, and pursuant to and by virtue of an act of parliament made in the second year of her Majesty's reign, intituled, "An Act for making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in perpetuity the revenues of the First-fruits and Tenths, and also for enabling other Persons to make Grants for

1716.

“ for the same Purpose,” did, in and by her letters-patent under the great seal of England, bearing date the third day of November, in the third year of her Majesty’s reign, make, nominate, constitute and appoint the persons therein named, to be one body politic and corporate, by the name of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, with such powers and authorities as are therein mentioned and expressed; and did, in and by the said letters-patent, give and grant unto the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors, all the revenues of the first-fruits and yearly perpetual tenths of all dignities, offices, benefices and promotions spiritual whatsoever payable to her Majesty, her heirs and successors, by virtue of any act or acts of parliament whatsoever, and all arrears of the said first-fruits and tenths (except as therein is excepted), to be applied and disposed of by the said governors thereby constituted to and for such ends, intents and purposes, as in and by the said letters-patent are contained and directed: And whereas the laws now in force relating to the collection and payment of that part of the said revenue, called the perpetual yearly tenths, are in some cases defective, and in many instances are found to be inconvenient and improper to be put in execution, by reason whereof her late Majesty’s said gracious intentions cannot so well and effectually be answered as they might be, if some new provisions and regulations were made and established for the more easy and expeditious levying and paying the said perpetual yearly tenths: For remedy therefore of such defects and inconveniences, and to the end that the said governors may be the better enabled to execute the trust in them reposed, and the poor clergy may, with greater ease and advantage, receive the benefit of the said royal bounty; Be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by authority of the same, That the most reverend the archbishops, and the right reverend the bishops of England, who by the statute made in the twenty-sixth year of the reign of King Henry the Eighth, intituled, “ The Bill for the First-fruits, with the yearly Pensions to the King,” and by other subsequent statutes, are constituted and appointed collectors of the said revenue of the perpetual yearly tenths within their several dioceses respectively, and charged with the receipt and payment of such collection, and made accountable for the same, from and after the twenty-sixth day of December last past, be, and each and every of them hereby is clearly exempted, acquitted, and discharged of and from the levying, collecting, and receiving within their and each of their proper and respective dioceses, the said perpetual yearly tenths from thenceforth accruing, of all dignities, offices, benefices and promotions spiritual, and of and from being chargeable with, and accountable for the receipt and collection of the same, by force or reason of any of the said statutes; the said statute of King Henry the Eighth, or any other statute to the contrary thereof in any wise notwithstanding.

The archbishops and bishops discharged from receiving the perpetual yearly tenths.
26 H. 8. c. 3.

2. And be it further enacted by the authority aforesaid, That from and after the said twenty-sixth day of December, there shall be one collector or receiver of the said perpetual yearly tenths of all dignities, offices, benefices and promotions spiritual whatsoever, granted to the said corporation of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, by the said first recited act and letters-patent (which have not been legally discharged by any act or acts of parliament since made, or otherwise) from time to time to be nominated and appointed, which said collector or receiver shall be and is hereby charged and chargeable to levy, collect, and receive, all such sums of money, wherewith all and every such dignities, offices, benefices and promotions spiritual, are charged and chargeable for and towards the payment of the said perpetual yearly tenths, and shall pay and content the said sums of money yearly unto the receipt of his Majesty’s exchequer at Westminster, in such manner and form as is hereinafter mentioned; and every such collector and receiver, and his lands and tenements, shall be and stand charged and chargeable for the sure and true payment of such

There shall be one collector appointed,

1716.

by the King,

and take an oath for the due execution of his office,

and give security.

The collector empowered to receive the said revenues, and give acquittances.

He shall keep his office in London or Westminster.

Notice of time and place of payment to be given in the London Gazette.

Penalty for failure of payment. How collector shall pass his accounts.

26 H. 8. c. 3.
32 H. 8. c. 47.
7 Ed. 6. c. 4.

Archbishops, &c. not paying, the collector shall certify it into the Exchequer, and be allowed it on his accounts.

Process to be issued against

such sums of money as he shall collect and receive of the said perpetual yearly tenths accordingly; and that such collector or receiver shall, from time to time, be nominated and appointed by his Majesty, his heirs and successors, by his or their letters-patent under the great seal of Great Britain; and that immediately after such nomination and appointment, and before he takes upon him the execution of his said office, every such collector or receiver shall take his corporal oath for the due and faithful execution of his said office, before any seven or more of the governors aforesaid for the time being, in a general court of the said corporation (who are hereby authorized and required to give and administer the said oath from time to time accordingly); and that every such collector or receiver shall likewise give security to the said corporation, or to such person or persons as they in their general court shall appoint, for his true and just accounting for, and payment of all and every sum and sums of money which he shall receive by virtue of the said office, and for the due and faithful execution and discharge of his said office, as the governors at a general court of the said corporation, at any time before his taking upon him the execution of the said office, shall order, direct, and appoint; and also that such collector or receiver of the said perpetual yearly tenths so appointed, as aforesaid, shall and may lawfully, and is hereby authorized and empowered to collect and receive the said revenue, and to give acquittances under his hand to the several and respective person or persons paying the same; whose acquittance or acquittances shall be a full and sufficient discharge to all persons paying the said perpetual yearly tenths, or any part thereof, for so much as they shall respectively pay unto such collector or receiver (for every of which acquittances the sum of six-pence, and no more, shall be paid), which said collector or receiver shall keep his office in some convenient place within the cities of London or Westminster, and shall give attendance for receipt of the said perpetual yearly tenths at such time or times as the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy in their court shall order, direct, and appoint, between the feast of the birth of our Lord Christ and the last day of April yearly; of which said times and place due notice shall be given by the said governors in the London Gazette yearly, by the space of one week at least before the said feast day, whereof every archbishop, bishop, and incumbent of any dignity, office, benefice or promotion spiritual, is and shall be obliged to take notice, and to observe the same accordingly in the payment of his and their respective rates, shares, and proportions of the said perpetual yearly tenths, wherewith they or any of them shall be charged or chargeable, without any further notice to be given them by way of summons, demand, or otherwise; and in default thereof to forfeit to the King's Majesty, his heirs and successors, such sum or sums of money as shall amount to double the value of the said tenths; and that every such collector or receiver shall make payments of the said tenths, and shall pass his accounts for the same, at such time and times, and in such manner as the said archbishops and bishops were ordered and directed in and by the several acts of parliament made for that purpose in the twenty-sixth and thirty-second years of the reign of King Henry the Eighth, and of the seventh year of the reign of King Edward the Sixth.

3. And it is hereby further enacted by the authority aforesaid, That if any archbishop or bishop, or any incumbent of any dignity, office, benefice or promotion spiritual, or any other person or persons, bodies politic or corporate, charged or chargeable with the payment of the said perpetual yearly tenth or tenths respectively, shall not pay or duly tender the same yearly, before the last day of April succeeding the Feast of the Nativity of our Lord Christ, whereon the same shall become due, that upon certificate thereof made by the collector or receiver on or before the first day of June following, the said collector or receiver shall be allowed upon his account all such sums of money as any archbishop, bishop, or incumbent, or other against whom such certificate shall be made, should or ought to have paid; and that then in every such case the treasurer, chancellor, and barons of the King's exchequer for the time being, shall devise, direct, and issue upon every such certificate, such process out

out of the King's Exchequer, as to them shall seem proper and reasonable, against every such archbishop, bishop or incumbent, or other, against whom such certificate shall be made, his and their executors or administrators, whereby such portion and part of the said yearly tenth, wherewith any such archbishop, bishop or incumbent, or other, is or shall be charged, and which shall be unpaid, as aforesaid, shall be truly levied, answered, satisfied and paid into the hands of the said collector or receiver; and all and every sum and sums of money so levied, answered and paid, the said collector or receiver shall bring to account, and charge himself therewith, from time to time, in his next account after he shall have received the same.

1716.

such as make
default in pay-
ment.

4. Provided always, and it is hereby declared, that nothing in this act contained shall extend, or be taken or construed to exonerate or discharge any archbishop, bishop, or any other person or persons, before the making of this act liable to the collecting, accounting for, and answering the said perpetual yearly tenths, or any part thereof, for any sum or sums of money wherewith he or they were and are respectively charged or chargeable, and not duly answered and accounted for before the making of this act: and that the said statute made in the said twenty-sixth year of the reign of the said King Henry the Eighth, and all and every other laws, statutes, and provisions, touching or concerning the imposing, charging, assessing and levying, and the true answering and payment of the first-fruits, and of the said tenths, or touching the charge, discharge or alteration of them, or any of them, or any matter or thing relating thereunto, which were in force at the time of the making of this present act, and not hereby or hereinbefore altered or repealed, shall be, remain and continue in their full force and effect, and shall hereafter be observed and put in due execution, according to the tenor and purport of the same, and every of them, in all things, excepting such as are in and by this act altered or repealed.

This act shall
not discharge
any archbishop,
&c. for monies
unaccounted for.

The act 26 H. 8.
c. 3. shall remain
in force.

5. Provided also, that this act, or any thing herein contained, shall not extend to avoid or any way impeach or affect any grant, exchange, alienation, or incumbrance at any time heretofore made of or charged upon the said revenue of the perpetual yearly tenths, or any part thereof, but that the same and every of them during the continuance of such grant, exchange, alienation or incumbrance respectively, shall be and remain of and in the same force, virtue and effect, as if this act had never been made.

This act shall
not avoid any
grant, &c.

31 Geo. 2. cap. 12.

1757.

An Act to encourage the Growth and Cultivation of Madder in that Part of Great Britain called England, by ascertaining the Tithe thereof there.

WHEREAS Madder is an ingredient essentially necessary in dying and calico printing, and of great consequence to the trade and manufactures of this kingdom; and may be raised therein equal in goodness, if not superior, to any foreign madder: and whereas the encouraging the growth thereof in this kingdom will be a saving of a very large sum of money, which is now paid for that commodity imported duty free from abroad; and will also be a means of employing great numbers of poor in the winter months: and whereas the ascertaining of the tithe of madder will be the greatest means of encouraging the growth of that commodity in this kingdom: may it therefore please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of August, which will be in the year of our Lord one thousand seven hundred and fifty-eight, all and every person and persons who shall plant, grow, raise and cultivate, or cause to be planted, grown, raised or cultivated, any madder in any parish or place within that part of Great Britain called England, shall pay or cause to be paid to every parson, vicar, curate or impropriator of any such parish or place, the sum of five shillings, and no more, yearly and every year, for each acre of madder so planted, grown, raised or cultivated, and so proportionably for more

Preamble.

Madder to pay
5s. per acre
tithe,

or

1757.

and not to be removed till tithe be paid.

Act not to extend to lands discharged of tithes, &c. and to be in force 14 years.

or less ground so planted or cultivated, in lieu of all manner of tithe of madder; for the recovery of which sum or sums of money, the parson, vicar, or impropriator, shall have the common and usual remedy allowed of by the laws of this realm.

2. Provided always, and be it enacted by the authority aforesaid, that no madder shall be carried off the ground on which it grows, before the sum or sums of money hereinbefore directed to be taken in lieu of tithes, be paid to the person or persons respectively entitled to receive the same.

3. Provided also, that this act, or any thing herein contained, shall not extend to charge any lands discharged by any *modus decimandi*, ancient composition, or other discharge of tithes by law.

4. Provided always, and be it enacted by the authority aforesaid, that this act shall continue and be in force for the space of fourteen years, and from thence to the end of the then next session of parliament and no longer.

1765.

5 Geo. 3. cap. 17.

An Act to confirm all Leases already made by Archbishops and Bishops, and other Ecclesiastical Persons, of Tithes, and other Incorporeal Hereditaments, for one, two, or three Life or Lives, or twenty-one Years; and to enable them to grant such Leases and to bring Actions of Debt for Recovery of Rents reserved and in Arrear on Leases for Life or Lives.

WHEREAS it may be doubtful whether, by the laws now in being, archbishops or bishops, masters and fellows, or any other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or any other person or persons having any spiritual or ecclesiastical promotions, heretofore had, or now have, any power to make or grant any lease or leases of tithes, or other incorporeal hereditaments only, which lie in grant, and not in livery, for one, two, or three lives, or for any term or terms of years not exceeding twenty-one years, although the ancient rent or yearly sum is thereby mentioned to be reserved, and all other requisites prescribed by the acts of parliament now in being to that end, or any of them, were or are justly and truly observed and performed, by reason that there is generally no place wherein a distress can be had or taken for such rent or yearly sum; and it may be also doubtful whether, in cases of such leases for life or lives, there is any remedy in law for such ecclesiastical or other persons, by action of debt or otherwise, for recovering the rent or yearly sum due and in arrear which is mentioned to be reserved on such leases for life or lives: therefore, for obviating all doubts touching the same, and enabling the said archbishops and bishops, masters and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other ecclesiastical persons, to make valid leases of such their incorporeal hereditaments, and to recover the rents or yearly sum mentioned to be reserved on any leases by them already granted, or to be granted, for one, two, or three lives, as aforesaid; and also to make good and effectual all such leases as have already been granted by them, or any of them: may it please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all leases for one, two, or three life or lives, or any term not exceeding twenty-one years, already made and granted, or which shall at any time from and after the passing this act be made or granted, of any tithes, tolls, or other incorporeal hereditaments, solely, and without any lands or corporeal hereditaments, by any archbishop or bishop, master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and every other person and persons, who are enabled by the several statutes now in being, or any of them, to make any lease or leases for one, two, or three life or lives, or any term or number of years not exceeding twenty-one years, of any lands, tenements, or other corporeal hereditaments, shall be, and are hereby deemed and declared to be, as good and effectual in law

Leases made, by ecclesiastical persons, of incorporeal hereditaments for life, or years, declared to be good.

law against such archbishop, bishop, masters and fellows, or other heads, members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other persons so granting the same, and their successors, and every of them, to all intents and purposes, as any lease or leases already made or to be made by any such archbishop or bishop, master and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other persons having spiritual promotion, of any lands or other corporeal hereditaments now are, by virtue of the statute of the thirty-second year of King Henry the Eighth, or any other statute now in being; any law, custom, or usage to the contrary thereof in anywise notwithstanding.

32 H. 8. c. 28.

2. Provided always, that nothing herein contained shall extend, or be construed to extend, to enable any master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or other ecclesiastical persons as aforesaid, to grant leases for any longer or other terms than by the local statutes of their several foundations, they are now respectively enabled to do.

3. And be it further enacted and declared by the authority aforesaid, that in case the rent or rents, or yearly sum or sums, reserved or made payable in or by any lease or leases already made or to be made by any archbishop or bishop, master and fellows, or other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and every other person and persons so enabled to make leases as aforesaid, for one, two, or three life or lives, or years, in pursuance of the several acts of parliament already in being, or by this present act, or any part thereof, shall be behind or unpaid by the space of twenty-eight days next over or after any of the days whereon the same, by such lease or leases, now are or hereafter shall or may be reserved and made payable; then, and so often, and from time to time, as it shall so happen, it shall and may be lawful for such archbishop or bishops, master and fellows, or other head and members of colleges or halls, deans and chapters, prebendaries, precentors, masters and guardians of hospitals, and other persons so making or granting, or having made or granted, such leases as aforesaid, or their executors, administrators, and successors respectively, to bring an action or actions of debt against the lessee or lessees to whom any such lease or leases for life or lives, or years, now are or hereafter shall be made and granted, his, her, or their heirs, executors, administrators, or assigns, for recovering the rent or rents which shall be then due and in arrear to any such archbishop or bishops, masters and fellows, or other heads and members of colleges or halls, deans, chapters, precentors, prebendaries, master and guardians of hospitals, and other person or persons before-mentioned, his or their executors, administrators, or successors, in such and the same manner, and as fully and effectually to all intents and purposes, as any landlord or lessor, or other person or persons, could or might do for recovering of arrears of rent due on any lease or leases for life or lives, or years, by the laws now in being; any law, statute, usage, or custom to the contrary notwithstanding.

Actions may be brought for rents in arrear, &c.

4. And it is hereby further enacted and declared by the authority aforesaid, that this act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such in all courts of law and equity, without specially pleading the same.

Public act.

5 Geo. 3. cap. 18.

An Act for continuing an Act, made in the thirty-first Year of his late Majesty's Reign, for encouraging the Growth and Cultivation of Madder in that Part of Great Britain called England, by ascertaining the Tithe thereof.

‘ WHEREAS an act made in the thirty-first year of his late Majesty King George the Second, intituled, “An Act to encourage the Growth and Cultivation of Madder in that Part of Great Britain called England, by ascertaining the Tithe thereof,” was to continue in force from ‘ the

31 Geo. 2. c. 12.

1765.

continued for
the further
term of 14
years.

' the first day of August, one thousand seven hundred and fifty-eight, for the
' space of fourteen years, and from thence to the end of the then next session
' of parliament: and whereas the cultivation of madder from the setting to its
' being fit for use, requires so long a time, and the buildings, mills, and other
' requisites necessary to be provided and maintained for manufacturing it, are
' so expensive, that many people may be unwilling to begin the culture of it
' during the subsisting term of the said act: and whereas the price of foreign
' madder is of late greatly raised, and the same does not come into the consumers'
' hands so good as it may be manufactured here: be it therefore enacted by
the King's most excellent Majesty, by and with the advice and consent of the
Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said act shall be, and the same
is hereby declared to be, further continued from the expiration thereof, for and
during the further term of fourteen years, and to the end of the then next session of parliament.

1777.

17 Geo. 3. cap. 53.

An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices.

Incumbent of
any living,
whereon there is
no house, &c.

' **W**HEREAS many of the parochial clergy, for want of proper habitations,
' are induced to reside at a distance from their benefices, by which means
' the parishioners lose the advantage of their instruction and hospitality, which
' were great objects in the original distribution of tithes and glebes for the en-
' dowment of churches: for remedy whereof, may it please your Majesty that
it may be enacted; and be it enacted by the King's most excellent Majesty,
by and with the advice and consent of the Lords Spiritual and Temporal, and
Commons, in this present Parliament assembled, and by the authority of the
same, that, from and after the twenty-fourth day of June, one thousand seven
hundred and seventy-seven, whenever the parson, vicar, or other incumbent,
of any ecclesiastical living, parochial benefice, chapelry, or perpetual curacy,
being under the jurisdiction of the bishop or other ecclesiastical ordinary,
whereon there is no house of habitation, or such house is become so ruinous
and decayed, or is so mean, that one year's net income and produce of such
living will not be sufficient to build, rebuild, or put the same, with the necessary
offices belonging thereto, in sufficient repair, shall think fit to apply for the aid
and assistance intended to be given by this act, it shall and may be lawful for every
such parson, vicar, or incumbent (after having procured, from some skilful and
experienced workman or surveyor, a certificate, containing a state of the con-
dition of the buildings on their respective glebes, and of the value of the timber
and other materials thereupon, fit to be employed in such buildings or repairs, or
to be sold, and also a plan and estimate of the work proposed to be done (such state
and estimate to be verified upon oath, taken before some justice of the peace,
or master in chancery, ordinary or extraordinary), and laid the same, together
with a just and particular account in writing, signed by him, and verified upon
oath, taken as aforesaid, of the annual profits of such living, before the ordi-
nary and patron of the living, and obtained their consent to such proposed new
buildings or repairs, by writing under their respective hands, in the form for
that purpose contained in the Schedule hereunto annexed), to borrow and take
up at interest, in the manner hereafter mentioned, such sum or sums of money
as the said estimate shall amount unto, after deducting the value of timber or
other materials which may be thought proper to be sold, not exceeding two
years net income and produce of such living, after deducting all rents, stipends,
taxes and other out-goings, excepting only the salaries to the assistant curate,
where such a curate is necessary; and as a security for the money so to be
borrowed, to mortgage the glebe, tithes, rents, and other profits and emolu-
ments, arising or to arise from such living, to such person or persons who shall
advance

(with the con-
sent of the ordi-
nary and pa-
tron) may bor-
row money to
build one,

and mortgage
the glebe, &c.
for twenty-five
years.

1777.

advance the same, by one or more deed or deeds, for the term of twenty-five years, or until the money so to be borrowed, with interest for the same, and such costs and charges as may attend the recovery thereof, shall be fully paid and satisfied, according to the terms, conditions, true intent and meaning of this act; which mortgage deed or deeds shall be made in the forms or to the effect for that purpose contained in the said schedule, and shall bind every succeeding parson, vicar, or incumbent, of such living, until the principal and interest, costs and charges, shall be paid off and discharged, as fully and effectually as if such successor had executed the same.

2. And be it further enacted, that every mortgagee shall execute a counterpart of every such mortgage, to be kept by the incumbent for the time being; and a copy of every such deed of mortgage shall be registered in the office of the registrar of the bishop of the diocese where the parish lies, or other ordinary having episcopal jurisdiction therein for the time being, after having been first examined by him with the original; which officer shall register the same, and be entitled to demand and receive the sum of five shillings, and no more, for such register; and every such deed shall be referred to upon all necessary occasions, the person inspecting the same, paying one shilling for every such search; and the said deed, or a copy thereof, certified under the hand of the registrar, shall be allowed as legal evidence, in case any such mortgage deed shall happen to be lost or destroyed.

Every mortgagee to execute a counterpart of the mortgage, to be kept by the incumbent, &c.

3. Provided always, and be it further enacted, that whenever the principal and interest, directed to be paid to the mortgagee, under the several provisions, of this act, shall be in arrear and unpaid, for the space of forty days after the same shall become due, it shall and may be lawful for such mortgagee, his executors, administrators, or assigns, to recover the same, and the costs and charges attending the recovery thereof, by distress and sale, in such manner as rents may be recovered by landlords or lessors from their tenants by the laws in being.

Mortgagee may distrain.

4. And be it further enacted, that the money so to be borrowed shall be paid into the hands of such person or persons as shall be nominated and appointed to receive and apply the same for the purposes aforesaid, by the ordinary, patron, and incumbent, by writing under their respective hands, in the form for that purpose contained in the said schedule, after such nominee shall have given a bond to the ordinary, with sufficient surety, in double the sum so to be borrowed or raised, with condition for his duly applying and accounting for the same according to the directions of this act; and the receipt of the person or persons so to be nominated shall be a sufficient discharge to the person or persons who shall advance and pay the money: and the person or persons, so to be nominated, shall enter into contracts with proper persons for such buildings or repairs as shall be approved by the ordinary, patron, and incumbent, and shall be specified in an instrument written upon parchment, and signed by them, in the form for that purpose contained in the said schedule; and shall inspect and have the care of the execution of such contracts, and shall pay the money for such buildings and repairs, according to the terms of such agreements, and shall take proper receipts and vouchers for the same; and as soon as such buildings or repairs shall be completed, and the money paid, shall make out an account of his receipts and payments, together with the vouchers for the same, and enter them in a book, fairly written, which shall be signed by him, and laid before the ordinary, patron, and incumbent, and examined by them; and when allowed, by writing under their respective hands, in the form for that purpose contained in the said schedule, such allowance shall be a full discharge to the person so nominated, in respect to the said accounts; and if any balance shall remain in the hands of such nominee or nominees, the same shall be laid out in some further lasting improvements in building upon such glebe, or shall be paid and applied in discharge of so much of the said principal debt as such balance will extend to pay, at the discretion of the said ordinary, patron, and incumbent, or two of them, of which the said ordinary to be one, by order signed by them, in the form for that purpose contained in the said schedule; and an account shall also be kept, made out, and allowed, of such further disbursements,

Money borrowed to be paid to such persons as ordinary, &c. shall appoint;

who shall contract for the buildings, &c.

How the balance shall be disposed of.

1777.



Ordinary to
cause inquiry to
be made of the
condition of the
buildings when
incumbent en-
tered on the
living, &c.

Directions for
payment of the
principal and
interest of the
mortgages, &c.

Proportioning
the annual pay-
ment, in case of
avoidance.

bursements, in manner aforesaid: all which accounts, when made out, completed, and allowed, shall be deposited, with the vouchers, in the hands of the said registrar, and kept by him for the use and benefit of the incumbents of such living for the time being, who shall have a right to inspect the same whenever occasion shall require, paying to such registrar or deputy-registrar, the sum of one shilling for every such inspection.

5. Provided always, and be it further enacted, that every such ordinary, before he or they shall signify his or their consent, in manner aforesaid, shall cause an inquiry to be made, and certified to him or them by the archdeacon, chancellor of the diocese, or other proper persons living in or near the parish where such buildings are proposed to be made or repaired, in the forms for that purpose specified in the said schedule, of the state and condition of such buildings at the time the incumbent entered upon such living or benefice, how long such incumbent had enjoyed such living or benefice, what money he had received, or may be entitled to receive, for dilapidations, and how and in what manner he had laid out what he had so received; and if it shall appear to them that such incumbent had, by wilful negligence, suffered such buildings to go out of repair, then to certify the same to the said ordinary, and also the amount of the damage which such buildings had sustained by the wilful neglect of such incumbent; and such incumbent, if the ordinary require it, shall pay the same into the hands of the nominee or nominees to be appointed under the authority of this act, towards defraying the expenses of building or repairs, before the ordinary shall give his consent as aforesaid.

6. And be it further enacted, that the incumbent of every such living or benefice, in cases where such mortgage or mortgages shall be made as aforesaid, and his successors for the time being, shall, and he and they is and are hereby required to pay the interest arising upon every such mortgage, yearly, as the same shall become due, or within one month after, and also five pounds *per centum per annum*, of the principal remaining due, by yearly payments; and that every such incumbent who shall not reside twenty weeks in each year upon such living, computing such year from the date of the said mortgage deed, shall, instead of the said sum of five pounds *per centum per annum*, pay the sum of ten pounds *per centum per annum*, of the principal remaining due, by yearly payments, such payments to be respectively made at the same time such interest shall be paid, until the whole principal money and interest shall be fully paid and discharged; and that every such incumbent, who shall pay only five pounds *per centum per annum* of such principal money, shall, at the time he pays the same, produce and deliver to the mortgagee a certificate under the hands of two rectors, vicars, or officiating ministers, of some parishes near adjoining, signifying that he had resided twenty weeks upon the said living or benefice, within the year for which such payment became due, according to the regulations aforesaid; which certificate shall be in the form, or to the effect, contained in the said schedule; and that every such incumbent shall, annually, at his own expense, from the time such buildings, authorised to be made by this act, shall be completed, insure, at one of the public offices established in London or Westminster for insurance of houses and buildings, the house and other buildings upon such glebe, against accidents by fire, at such sum of money as shall be agreed upon by the ordinary, patron, and incumbent; and in default of the payment of either the principal or interest, in manner aforesaid, or neglect of the incumbent to make such insurance, the ordinary shall have power to sequester the profits of the living till such payment or insurance shall be made.

7. And, in order that the payment of such year may be justly and equitably ascertained and adjusted, between the successor, and the parson, vicar, or incumbent, avoiding such living or benefice by death or otherwise, or his representatives, in case of death or other avoidance, in such proportions as the profits of such living shall have been received by them respectively, for the year in which such death or avoidance shall happen; be it further enacted, that in case any difference shall arise in adjusting or settling the proportions aforesaid, the same shall be determined by two indifferent persons, the one to be

1777.

be named by the said successor, and the other by the person making such avoidance, or his representatives, in case of his death; and in case such nominees shall not be appointed within the space of two calendar months next after such death or avoidance, or if they cannot agree in adjusting such proportions within the space of one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman, to be nominated by the ordinary, whose determination shall be final and conclusive between the parties; which nominations and determinations shall be made according to the forms for that purpose contained in the said schedule, as near as conveniently may be.

8. And be it further enacted, that where there shall be no house of habitation upon any ecclesiastical living or benefice, so described as aforesaid, exceeding in clear yearly value one hundred pounds *per annum*, or being one, the same shall be so mean, or in such a state of decay as aforesaid, and the incumbent shall not reside in the parish twenty weeks within any year, computing the same from the first day of January, it shall be lawful for the ordinary of such living or benefice, with the consent of the patron (in case the incumbent shall not think fit to lay out one year's income, where the same may be sufficient, to put the house and buildings in proper and sufficient repair, or to make such application as aforesaid, for building, repairing, or rebuilding such parsonage house), to procure such plan, estimate, and certificate, as herein directed, and at any time, within the course of the succeeding year, to proceed in the execution of the several purposes of this act, in such manner as the parson, vicar, or incumbent is hereby authorized and directed to proceed, and to make and execute such mortgage as aforesaid; which shall be binding upon the incumbent and his successors, and he and they shall be, and are hereby made liable to the payment of the interest, principal, and costs; and every such incumbent, and his representatives, shall be, and are hereby also made respectively liable to the proportion of the payments for the year which shall be growing at the time of the death of such incumbent, or avoidance of such living, according to the directions aforesaid; which said interest, principal, and costs, and proportion of payments growing at the time of the death of such incumbent or avoidance, shall and may be recovered against such incumbent, his successors or representatives, respectively, by action of debt, in any court of record.

The ordinary of any living worth 100*l.* per ann. which has no proper habitation, may proceed in execution of this act, &c.

9. And be it further enacted, that all sum and sums of money recovered or received, by suit or compositions, from the representatives of any former incumbent of such living or benefice, and not laid out in the repairs of such buildings, shall go and be applied in part of the payments under such estimate as aforesaid; and that all money thereafter to be recovered or received, in case the same cannot be had before such buildings are completed, and the money paid for the same, shall be applied, as soon as received, in payment of the principal then due, as far as the same will extend; or in case the said mortgage money shall have been discharged, all such money arising from dilapidations shall be paid into the hands of the nominee to be appointed as aforesaid, or of some other person or persons to be nominated by the ordinary, patron, and incumbent, in case such nominee shall be dead, or shall decline to act therein, to be laid out and expended in making some additional buildings or improvements upon the glebe of such living or benefice, to be approved by the ordinary, patron, and incumbent; and in the mean time, or in case such buildings shall not be necessary, then in trust, to lay out the same in government or other good securities, and pay the interest thereof to the incumbent for the time being.

Money received for dilapidations, &c. shall be applied in part of the payments, &c.

10. Provided always, and be it further enacted, that where new buildings are necessary to be provided or erected for the habitation and residence of the rector, vicar, or other incumbent, pursuant to the authority hereby given, it shall and may be lawful for the ordinary, patron, and incumbent of every such living or benefice, to contract, or to authorize, if they shall think fit, the person so to be nominated by them as aforesaid, to contract for the absolute purchase of any house or buildings, in a situation convenient for the habitation and residence

Where new buildings are necessary, ordinary, &c. may purchase any convenient house, &c.

1777.



sidence of the rector or vicar of such living or benefice, and not at a greater distance than one mile from the church belonging to such living, benefice, or chapelry; and also to contract for any land adjoining or lying convenient to such house or building, or to the house or building belonging to any parochial living or benefice, having no glebe lying near or convenient to the same, not exceeding two acres, if the annual value of such living, to be ascertained, as aforesaid, shall be less than one hundred pounds *per annum*, nor two acres for every one hundred pounds *per annum*, if of greater value, and to cause the purchase-money for such house or buildings to be paid out of the money to arise under the powers and authorities of this act; in all which cases the said buildings and lands shall be conveyed to the patron of such living or benefice, and his heirs, in trust, for the sole use and benefit of the rector, vicar, or other incumbent of such living or benefice for the time being, and their successors, and shall be annexed to such church or chapel, and be enjoyed and go in succession with the same for ever; but no contract so made by the nominee shall be valid, until confirmed by the ordinary, patron, and incumbent, by writing under their hands; and every such purchase-deed shall be in the form or to the effect contained in the schedule hereunto annexed, and shall be registered in such manner, and in such office, as the other deeds are hereby directed to be registered.

Purchase-money to be raised by sale, &c. of part of the glebe or tithes.

11. Provided also, and be it further enacted, that when any such land lying near to the parsonage house and buildings, belonging to such living or benefices, or to be so purchased or exchanged as aforesaid, shall be thought fit to be taken and used as a convenience for the same, the purchase-money or equivalent for such land shall be raised and had by sale or exchange of some part of the glebe or tithes of such living or benefice, which shall appear to the said ordinary, patron, and incumbent, most convenient for that purpose; and every such sale or exchange shall be by deed, in the form or to the effect contained in the schedule hereunto annexed, and registered as hereinbefore directed.

Governors of Queen Anne's bounty empowered to lend, &c.

12. And be it further enacted, that it shall and may be lawful for the governors authorised or appointed to regulate and superintend the bounty given by her late Majesty Queen Anne, for the augmentation of the maintenance of the poor clergy, to advance and lend any sum or sums of money, not exceeding the sum of one hundred pounds, in respect of each living or benefice, out of the money which has arisen, or shall from time to time arise from that bounty, for promoting and assisting the several purposes of this act, with respect to any such livings or benefices as shall not exceed the clear annual improved value of fifty pounds; and such mortgage and security shall be made for the repayment of the principal sums so to be advanced, as are hereinbefore mentioned, but no interest shall be paid for the same; and in cases where the annual value of such living or benefice shall exceed the sum of fifty pounds, that it shall and may be lawful for the said governors to advance and lend, for the purposes of this act, any sum not exceeding two years income of such living or benefice upon such mortgage and security as aforesaid, and subject to the several regulations of this act, and to receive interest for the same, not exceeding four pounds for one hundred pounds by the year.

Colleges, &c. may lend any sums without interest.

13. And be it further enacted, That it shall and may be lawful for any college or hall, within the universities of Oxford and Cambridge, or for any other corporate bodies possessed of the patronage of ecclesiastical livings or benefices, to advance and lend any sum or sums of money, of which they have the power of disposing, in order to aid and assist the several purposes of this act, for the building, rebuilding, repairing, or purchasing, of any houses or buildings for the habitation and convenience of the clergy, upon livings or benefices under the patronage of such college or hall, upon the mortgage and security directed by this act for the repayment of the principal, without taking any interest for the same.

Who is to act for any patron who shall be a minor, &c.

14. And be it further enacted, that whenever the patron of any living or benefice, to which the provisions of this act are proposed to be extended, shall happen to be a minor, idiot, lunatic, or feme-covert, it shall and may be lawful for the guardian, committee, or husband of every such patron, to transact the several matters aforesaid for such patron, who shall be bound thereby, in such

such manner as if he or she had been of full age, of sound mind, or feme-sole, and had done such act, or given his or her consent thereto.

1777.

15. Provided also, and be it further enacted, that all acts hereinbefore required to be done or consented to by the ordinary and patron, shall be done by the ordinary alone, when such ordinary shall happen to be the patron of the living; and that no deed, bond, transfer, or other writing, instrument, or proceeding, made, had, or done, under the powers or authority of this act, shall be charged or chargeable with any stamp-duty, or fee of office, except as herein mentioned; any law or statute to the contrary notwithstanding.

Writings not liable to stamp-duty.

16. Provided always, and it is hereby further enacted, that in all cases where any act is required to be done by the ordinary, in the execution of any of the purposes of this act, and such ordinary shall be a body corporate aggregate, every such act shall be done and signified under the seal of such body corporate.

Proviso, when ordinary a body corporate, &c.

17. Provided always, and be it further enacted, that where the incumbent of any chapelry or perpetual cure shall be nominated by the rector or vicar of the parish wherein the same is situated, in every such case the consent of such rector or vicar, together with the consent of the patron of such rectory, shall be necessary in all such matters wherein the consent of the patron is required by the former provisions of this act.

Consent of rector, &c.

18. Provided likewise, and be it further enacted, that whenever any controversy or dispute shall arise, touching the residence of the incumbent, with respect to any of the matters contained in this act, the same shall be adjusted and determined by the ordinary of the diocese.

Disputes touching residence, &c.

19. Provided also, and be it further enacted, That it shall and may be lawful for the patron, ordinary, and incumbent, of any such living or benefice as aforesaid, or any two of them, of which the ordinary to be one, by writing under their hands, to make such allowance to the person or persons to be nominated by them, for the purpose of paying and applying the money so to be raised as aforesaid, as they think shall fit, not exceeding the sum of five pounds for every one hundred pounds so to be laid out and expended as aforesaid.

Patron, &c. to make allowance for applying the money, &c.

20. Provided also and be it further enacted, That in all cases where the patronage of any living or benefice hereinbefore described shall be in the crown, and such living or benefice shall be above the yearly value of twenty pounds in the King's books, the consent of the crown to the several proceedings hereby authorized respecting such living or benefice, shall be signified by the Lord High Treasurer, or First Lord Commissioner of the Treasury for the time being; but if such living or benefice shall not exceed the value of twenty pounds in the King's books, such consent shall be signified by the Lord High Chancellor, Lord Keeper, or Commissioners of the Great Seal for the time being; or if such living or benefice shall be within the patronage of the crown in right of the duchy of Lancaster, then such consent shall be signified by the chancellor of the duchy for the time being, by writing under their respective hands, in the form or to the effect for that purpose contained in the schedule hereunto annexed; and that in all such cases where such deed is hereby required to be executed by the patron as well as the ordinary and incumbent, such deed shall be valid and effectual to all intents and purposes whatsoever, if executed by the ordinary and incumbent only, after such consent shall have been obtained as aforesaid from the said Lord High Treasurer, First Commissioner of the Treasury, Lord Chancellor, Lord Keeper, Lords Commissioners of the Great Seal, or Chancellor of the Duchy of Lancaster, respectively, as the case shall be, provided such consent shall be registered at the register office aforesaid.

In what manner the consent of the crown shall be made known, &c.

21. And be it further enacted, That it shall and may be lawful for any archbishop or bishop of any diocese, and also for any ecclesiastical corporation, sole or aggregate, being lord or lords of any manor within which there shall be any waste or common lands, parcel of the demesnes of such manor, lying convenient for the house and buildings, and other the purposes of this act, to grant a part or parts of such waste or common lands in perpetuity for the several purposes of this act, leaving sufficient common for the several persons having right of common upon such waste or commons, and obtaining the consent of the lessee of such lands, if the same shall be in lease.

Lords of manors may grant a part in perpetuity, &c.

1777.

Schedule to which the Bill refers.

Form of the Consent of the Ordinary and Patron (to be written on parchment.)

A. B., rector, vicar, &c. (as the case shall be) of the parish, chapelry, or perpetual curacy (as the case shall be), of _____ in the county of _____ under the jurisdiction of the ordinary, having produced to us the said ordinary, and _____ patron of the said church and living, a certificate under the hand of _____ a skilful and experienced workman or surveyor, of the state and condition of the buildings upon the glebe belonging to the said church, chapelry, or perpetual curacy (as the case shall be), and of the value of the timber, and other materials thereupon, fit to be sold, or employed about such buildings; and also a plan, made by the said _____ of the work proposed to be done by new buildings and repairs upon the said glebe, and an estimate of the expense attending the same, after applying the said materials, or the money to arise from the sale thereof, in such buildings and repairs; and also a particular account in writing, signed by the said A. B., of the annual profits of such living, and of the rents, stipends, taxes and other outgoings, annually issuing thereout, verified upon oath pursuant to the directions of an act, passed in the seventeenth year of the reign of his Majesty King George the Third, "To promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their benefices;" and having considered such certificate, plan, and account: Now, we do approve thereof; and do consent, that such buildings and repairs shall be made as therein specified; and that the said A. B. do borrow and take up at interest the sum of _____ being the estimate of the expenses, after deducting the value of the timber, and other materials, thought proper to be sold, and which appears to us, from the said account, a sum not exceeding two years net income and produce of the said living; which money is to be paid to _____ (a person nominated by us and the said A. B.), and applied according to the direction of the said act.

Form of the Mortgage.

This indenture, made the _____ day of _____ in the _____ year of the reign of his Majesty _____ and in the year of our Lord _____ between the reverend _____ rector or vicar, &c. of the parish church, curacy, or chapelry, of _____ in the county of _____ and in the diocese of the bishop of _____ of the one part; and _____ of the other part;

Whereas the said _____ pursuant to the directions of an act, passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements for the use of their Benefices," hath obtained the consent of the ordinary of the said diocese, and the patron of the said church or living, to borrow and take up at interest the sum of _____ to be laid out and expended in building, rebuilding, or repairing (as the case shall be) the parsonage-house, and other necessary offices, upon the glebe belonging to the said church, chapel or curacy, as appears by an instrument, signed by the said ordinary and patron, hereunto annexed: And whereas the said _____ hath agreed to lend and advance the sum of _____ upon a mortgage of the glebe, tithes, rents, and other profits and emoluments of the said living, pursuant to the direction and the true intent and meaning of the said act: Now this indenture witnesseth, That the said _____ in consideration of the sum of five shillings to him in hand paid, and the sum of _____ paid at or before the sealing and delivery hereof, into the hands of _____ (a person or persons (as the case shall be) nomi-

1777.

nominated by the said ordinary, patron and incumbent, to receive the same, pursuant to the direction of the said act (which nomination is also hereunto annexed) and which receipt of the said sum of

the said have or hath acknowledged by an indorsement on the back of this deed), hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell and demise, unto the said his executors, administrators, and assigns, all the glebe lands, tithes, rents, *moduses*, compositions for tithes, salaries, stipends, fees, gratuities, and other emoluments and profits whatsoever, arising, coming, growing, renewing, or payable to the rector, vicar, or incumbent, (as the case shall be) of the said living in respect thereof, with all and every their rights, privileges, and appurtenances thereunto belonging, to have, hold, receive, take, and enjoy the said premises, with their and every of their appurtenances, unto the said

his executors, administrators, and assigns, from henceforth, for and during the term of years fully to be complete and ended, in as full, ample, and beneficial manner, and with such remedies and powers for obtaining and recovering the same, and every part thereof, to all intents and purposes as the said

his successors, rectors, vicars, &c. (as the case shall be) of the said church, could or might, or ought to have held, enjoyed, received, taken, or recovered the same, if these presents had not been made :

In cases where the mortgage by this act directed is to be made by the ordinary and patron alone, without the incumbent, this covenant and proviso are to be omitted, and the form is to be varied in such other respects as shall be necessary.

And the said A. B. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said

his executors, administrators, and assigns, That he the said A. B., during the time he shall continue rector, vicar, &c. of the said parish and parish church, shall and

will well and truly pay, or cause to be paid unto the said

his executors, administrators, or assigns, interest for the said sum of

or so much thereof as shall remain due at the end of every year, to be computed from the day of the date of these presents, after the rate of *per centum per annum*, by yearly payments, the first of the said payments to begin and be made on the day of

next ; and also at the several times before mentioned for payment of the interest, as aforesaid, shall and will well and truly pay, or cause to be paid, the sum of five pounds *per centum per annum* of the principal which remained due at the beginning of the year in which every such payment is to be paid, in case the said A. B. shall be resident upon the said living, for the time mentioned in, and according to the true intent and meaning of the said act ; and in case the said A. B. shall not reside upon the said living during the time mentioned in, and according to the true intent and meaning of the said act, he shall pay or cause to be paid, the sum of ten pounds *per centum per annum* of the said principal money, by such yearly payments as aforesaid, instead of the said sum of five pounds *per centum per annum*, and shall and will continue such respective payments of the said interest and on account of the said principal money, so long as he shall continue rector, vicar, &c. (as the case shall be) of the said parish and parish church, unless all the said principal money, and interest for the same, shall be sooner paid and discharged. Provided always and these presents are upon this condition, That if the said A. B. and his successors shall well and truly pay, or cause to be paid, the said principal money, and interest for the same, in manner and at the times aforesaid, according to the true intent and meaning of the said act, and of these presents, and also all costs and charges which shall have been occasioned by the non-payment thereof, these presents and every thing herein contained, shall cease and be void. Provided also, That it shall and may be lawful for the said A. B. and his successors, peaceably and quietly to hold, occupy, possess, and enjoy, all and singular the said glebe lands, tithes, rents, *moduses*, composition for tithes, stipends, fees, gratuities,

1777.

gratuities, and other emoluments and profits whatsoever, arising, or to arise, from or in respect of the said living, until default shall be made by him or them respectively in the payment of the interest and principal, or some part thereof, at the times and in the manner aforesaid. In witness, &c.

Nomination of a Clergyman by the Bishop, to settle any Dispute about the proportion of the Payments within the Year in which any avoidance shall happen.

I, the right reverend bishop of pursuant to the authority of an act, passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices," do hereby nominate the reverend being a clergyman within my said diocese, to adjust and determine the matter in dispute between the reverend clerk, the present incumbent of the rectory, vicarage, &c. of within my diocese, and the representatives of the the last incumbent, (in case of his death) or the said (in case of his resignation or promotion) concerning the due proportion to be paid by each of the said parties of the principal and interest which accrued due within the year in which such other death or other avoidance happened, according to the direction, true intent and meaning of the said act. Given under my hand, this day of

Award and Determination of the Clergyman nominated by the Bishop.

I, the reverend A. B. of in the county of and diocese of the bishop of , clerk, having been nominated by the said bishop, pursuant to the power given by an act, passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices," to adjust and determine the matter in dispute between the reverend , clerk, the present incumbent of the rectory, vicarage, &c. of within the said diocese and the representatives of the last incumbent (in case of his death), or the said (in case of his resignation or promotion) concerning the due proportion to be paid by each of the said parties, of the principal and interest which accrued due within the year in which such death or avoidance happened, according to the direction and true intent and meaning of the said act; and having heard and duly considered the said matters so referred to me as aforesaid, do award, adjudge, and determine, That the said shall pay, in respect of the interest and principal which became due within the year aforesaid, the sum of and that the said shall pay, in respect of the same, the sum of being the remainder thereof, according to the provision and direction of the said act. Given under my hand, this day of

Appointment of the Nominee (to be written on parchment.)

We, whose names are subscribed, being the ordinary, patron, and incumbent, of the rectory, vicarage, &c. of within the county of and diocese of the bishop of do hereby nominate and appoint of

to receive the money authorised to be raised by an act, passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices," for the purpose of building, rebuilding, repairing, or purchasing the parsonage-house, &c. (as the case may be) to the said rectory, vicarage, &c. belonging, and to pay and apply the same, and to enter

enter into contracts with proper persons for such buildings or repairs, and to inspect and take care of the execution of such contracts, and to take such receipts and vouchers, keep such accounts, and do and perform all such other matters and things, which such nominees are authorised and required to do and perform in and by the said act, the said _____ having given security for the due application thereof, according to the direction of the said Act. Given under our hands, this _____ day of _____

Form of Order of the Ordinary, Patron, and Incumbent, for laying out or applying the Surplus Money.

We whose names are subscribed, being the ordinary, patron, and incumbent, of the rectory, vicarage, &c. of _____ in the county of _____ and diocese of the bishop of _____ do hereby order, That the sum of _____ now remaining in the hands of _____ the person nominated and appointed to receive and apply the money raised for building, repairing, &c. the parsonage-house, &c. belonging to the said rectory, vicarage, &c. under the act of parliament passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary Buildings and Tenements, for the use of their Benefices," shall be paid to _____ being the person intituled to receive the money now remaining due on the mortgage made of the glebe lands, tithes and other profits and emoluments of the said living, and applied in part of payment thereof, pursuant to the direction of the said act, or applied in building or repairing, &c. (describing the same) upon the glebe belonging to the said living. Given under our hands, this _____ day of _____

Form of Certificate from the two Clergymen.

We, the reverend A. B., of _____ in the county of _____ clerk, and C. D. of _____ clerk, being two clergymen within the diocese of the bishop of _____ do hereby certify to the said bishop, pursuant to the directions and instructions sent by him to us, That we have made inquiry into the state and condition of the buildings upon the glebe belonging to the rectory, vicarage, &c. of _____ within the said diocese, at the time the reverend _____ clerk, the present incumbent thereof, entered upon the said living, which was in or about the year of our Lord _____ and do find, That the same have been kept in due and common repair, without any wilful neglect (if the case is so), or That the same have, by wilful negligence, been suffered to go to decay, and that they have sustained damage, from a want of common and ordinary repair, to the amount of _____ pounds, and we have also inquired into the money received by the said _____ for dilapidations, from the representatives of the former incumbent, and do find, That he hath received the sum of _____ for such dilapidations; and that he hath expended the whole, or _____ thereof (as the case may be) in the necessary repairs of the buildings, or that the same hath not been laid out or expended in repairing the buildings upon the glebe belonging to the said living. Given under our hands, this _____ day of _____

Form of the Deed of Sale, or Exchange, of Lands or Tithes belonging to the Living or Benefice.

This indenture, made the _____ day of _____ in the _____ year of the reign of his Majesty King George the _____ between A. B. _____ ordinary of the rectory (vicarage, chapelry, or perpetual cure, as the case shall be) of _____ in the county of _____ C. D. _____ of _____ patron of the said rectory, &c. and the reverend E. F. _____ clerk,

1777.

clerk, incumbent of the said rectory, &c. of the one part, and G. H. of the other part. Whereas in the execution of an act, passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act, &c." (here set forth the title of the act) it hath been found convenient to purchase (or exchange, as the case shall be) certain lands, &c. (describe particularly the lands purchased) lying near and convenient to the parsonage house belonging to the said rectory, &c. (or, if the house be lately purchased) [lying near a certain messuage, house, or tenement, and buildings, lately purchased for the habitation of the minister of the said rectory, &c. under the powers of the said act] and it hath been found most convenient, and agreed by the said ordinary, patron, and incumbent, that the glebe lands, (or tithes as the case shall be) hereinafter described, belonging to the said rectory, &c. shall be sold to raise the sum of being the purchase-money for the said lands hereinbefore described (or exchanged, if the same is to be done by exchange, in order to make an equivalent for such lands) and a contract hath been made with the said G. H. for the absolute sale, at the price or sum of (or exchange as the case shall be) of part of the glebe-lands (or of the tithes, as the case shall be) belonging to the said rectory, &c. hereinafter mentioned; that is to say (here describe the particulars of the land or tithes proposed to be sold or exchanged) which contract is hereby ratified and confirmed by the said ordinary, patron, and incumbent: Now this indenture witnesseth, That the said A. B., C. D., and E. F., in order to carry the said contract into execution, and to fulfil the purposes of the said recited act, in pursuance of the powers thereby to them given, and in consideration of the sum of the receipt whereof is acknowledged on the back of this deed, which sum hath been paid and applied in the purchase of the lands hereinbefore described; have, and each of them hath granted, bargained and sold, (and exchanged, if the same be by exchange,) and by these presents do, and each of them doth grant, bargain, sell (and exchange, if by exchange) unto the said G. H., and his heirs and assigns, all, &c. (here describe the lands or tithes as the case shall be) with their and every of their rights, privileges, and appurtenances, to hold to and to the use of the said G. H., his heirs and assigns for ever. (If done by exchange add the following words, In exchange for certain lands, which belonged to the said G. H., and are by indentures of equal date herewith, exchanged and conveyed to the said C. D. in trust, for the sole use and benefit of the said E. F., and his successors, rectors, vicars, &c. (as the case shall be) of the said living or benefice, for the time being, for ever.) And the said A. B., C. D., and E. F., do hereby severally covenant for themselves, their several executors and administrators, to and with the said G. H., his heirs and assigns, That they nor any of them, have or hath done any act, whereby the said lands, (or tithes, as the case shall be,) can or may be incumbered; and that the said G. H., his heirs and assigns, shall and may, from time to time, for ever hereafter peaceably and quietly hold and enjoy the said glebe-lands, (or tithes, as the case shall be) according to the true intent and meaning of the said act, without any, lett, hinderance or interruption, of or from them, or any of them.

' In witness, &c.

Form of the Deed of Purchase or Exchange of Buildings or Lands to be annexed to the Living or Benefice.

This indenture, made the day of in the year of the reign of his Majesty King and in the year of our Lord between A. B. of of the one part; C. D., ordinary of the rectory, vicarage, chapelry, or perpetual cure, (as the case shall be) of in the county of E. F. of patron of the said rectory, &c. and the reverend G. H., clerk, incumbent of the said rectory, &c. of the other part. Whereas, there is no parsonage-house belonging to the said rectory, &c. (or the parsonage house belonging to the said rectory, &c. is become so ruinous and decayed, (or so mean,) that it is not fit for the habitation

tion of the minister of the said rectory, &c.) and one year's net income or produce of the said living or benefice will not be sufficient to rebuild or repair the said house, with the necessary offices belonging thereto: And whereas a certain messuage, the property of the said A. B., and lying within the distance of yards from the church (or chapel, as the case shall be) of the said rectory, &c. appears to the said ordinary, patron, and incumbent, proper and convenient for the habitation and use of the minister of the said rectory, &c. [and more commodious than the present house and buildings upon the glebe of the said rectory, &c.] (in cases where there are any); and a contract hath been made, by the direction and with the approbation and consent of the said ordinary, patron, and incumbent, with the said A. B., which is hereby ratified and confirmed by the said ordinary, patron, and incumbent, for the absolute purchase of the said messuage, house or tenement, and buildings, for the price or sum of pursuant to the directions of an act passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act, &c." (set forth the title of the act:

This to be inserted when the lands are purchased from the person who sells the house and buildings.

[And whereas a contract has likewise been made with the said A. B. by the like direction, approbation, and consent, which is hereby likewise ratified and confirmed by the said ordinary, patron, and incumbent, for the absolute purchase of the inheritance of a certain yard, garden, orchard, and piece or parcel of land, (describing them particularly, as the case shall be) lying near or convenient to the said messuage, house, tenement, and buildings, containing by admeasurement, for the price or sum of which have been agreed by the said ordinary, patron, and incumbent, to be raised by the sale (or exchange) of certain lands (or tithes, as the case shall be) belonging to the said rectory, &c. hereinafter described, pursuant to the powers given by the said act; viz. (here give a full description of the lands so agreed to be sold); (if the equivalent is to be by exchange, then after the word, incumbent, last mentioned, insert, [and the said A. B. to be exchanged for [certain lands or tithes, &c. (as above.)] Now this indenture witnesseth,

That the said A. B. for and in consideration of the said several sums of and to him in hand paid for the purchase aforesaid (if both the buildings and lands are purchased for money); (but if the equivalent for the land is to be by exchange, then) in consideration of the said sum of for the purchase of the said messuage, house, or tenement, and buildings, and in consideration of the land (or tithes, as the case shall be) so agreed to be exchanged as aforesaid, and intended to be conveyed to him the said A. B., by the said ordinary, patron, and incumbent, by indenture of equal date herewith] the receipt of which said sum (or sums of money, as the case shall be) [and acknowledgment of the said exchange] (if the equivalent for the land is to be by exchange) the said A. B. hath admitted, by an indorsement on the back of this deed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, (if by exchange) [hath granted, bargained, sold, and exchanged, with, and] unto the said E. F. and his heirs, all, &c. (here insert a full description of the buildings or lands so intended to be conveyed, with their and every of their rights, privileges, and appurtenances) to hold to the said E. F. and his heirs, in trust, for the sole use and benefit of the said G. H. and his successors, rectors, vicars, &c. (as the case shall be) of the said living or benefice for the time being, for ever: And the said A. B., for himself, his heirs, executors, and administrator, doth covenant and agree to and with the said E. F. and his heirs, That he hath good right to convey the said messuage, house, or tenement, and buildings, lands, &c. (as the case shall be) and that he will warrant the same, for the uses and purposes aforesaid, for ever, free from all claims, charges, and incumbrances whatsoever, by, from, or under him, or any of his ancestors. In witness, &c.

1777.

Form of Certificate of Residence.

We, A. B., rector, vicar, or officiating minister (as the case shall be) of the parish of _____ in the diocese of _____ clerk, and C. D., rector, vicar, or officiating minister, (as the case shall be) of the parish of _____ within the said diocese, clerk, which said parishes of _____ and _____ are near adjoining to the parish of _____ within the said diocese, do hereby certify, That E. F. rector, vicar, or incumbent, (as the case shall be) of the said parish or parish church of _____ aforesaid, hath resided upon his living or benefice, within that parish, for the space of twenty weeks, between the _____ day of _____ and the _____ day of _____ last. Given under our hands, this _____ day of _____

Form of Consent where the Living or Benefice shall be in the Patronage of the Crown, or within the Duchy of Lancaster.

Whereas the living or benefice of _____ within the diocese of _____ is in the patronage of the crown, and rated above, or under (as the case shall be) twenty pounds *per annum*, in the King's books, or of the chancellor of the duchy of Lancaster (as the case shall be); and application hath been made for building (rebuilding, repairing, or purchasing or exchanging, as the case shall be) the parsonage-house, or other buildings, or land, (as the case shall be) for the use of the said living or benefice, in pursuance of the powers given for that purpose, by an act passed in the seventeenth year of the reign of his Majesty King George the Third, intituled, "An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices;" now I the right honourable _____ First Lord Commissioner of the Treasury, Lord High Chancellor of Great Britain, or Chancellor of the Duchy of Lancaster, (as the case shall be,) being satisfied that such building, rebuilding, repairing, purchasing, or exchanging, &c. (as the case shall be) will be an improvement and advantage to the said living or benefice, do hereby consent, That such buildings, repairs, purchases, or exchanges (as the case shall be), shall be made, according to the directions and the true intent and meaning the said act. Given under my hand, this _____ day of _____

1796.

36 Geo. 3. c. 83.

An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne's Bounty, with respect to the Avoidance of other Benefices.—[May 14, 1796.]

18 Ann. stat. 2.
c. 12. § 1.

WHEREAS, in and by a statute passed in the twelfth year of the reign of Queen Anne, it is enacted, That if any rector or vicar, having cure of souls, should, after the twenty-ninth of September, one thousand seven hundred and fourteen, nominate and present any curate to the bishop or ordinary, to be licensed or admitted to serve the cure of such rector or vicar in his absence, the said bishop or ordinary, having regard to the greatness of the cure, and the value of the ecclesiastical benefices of such rector or vicar, should, on or before the granting such license, appoint, by writing under his hand and seal, a sufficient certain stipend or allowance, not exceeding fifty pounds *per annum*, nor less than twenty pounds *per annum*, to be paid or answered at such times as he should think fit, by such rector or vicar to such curate, for his support and maintenance; and if it should appear to the bishop or ordinary, upon complaint or otherwise, that any curate of such rector or vicar, licensed or admitted before the twenty-ninth of September, one thousand seven hundred and fourteen, had not a sufficient maintenance, it should be lawful for the said bishop

1796.

‘ bishop or ordinary to appoint him a certain stipend or allowance in like manner
 ‘ as before mentioned ; and in case any difference should arise between any rec-
 ‘ tor or vicar and his curate, touching such stipend or allowance, or the payment
 ‘ thereof, the bishop or ordinary, on complaint to him made, should summarily
 ‘ hear and determine the same ; and in case of neglect or refusal to pay such
 ‘ stipend or allowance, might sequester the profits of such benefice for and until
 ‘ payment thereof : and whereas in many places the provision made, in and by
 ‘ the said statute, for the support and maintenance of such curate is now become
 ‘ insufficient ;’ be it enacted by the King’s most excellent Majesty, by and with
 the advice and consent of the Lords spiritual and temporal, and Commons, in
 this parliament assembled, and by the authority of the same, That it shall
 and may be lawful for the bishop or ordinary to appoint under his hand
 and seal any stipend or allowance for any curate heretofore nominated or em-
 ployed, or hereafter to be nominated or employed, not exceeding seventy-five
 pounds *per annum*, over and besides, on livings where the rector or vicar does
 not personally reside four months in the year at least, the use of the rectory or
 vicarage house, and the garden and stable thereunto belonging, such use to be
 granted to the said curate for the space of twelve calendar months by the au-
 thority of the bishop or ordinary, under his hand and seal, with power in the
 said bishop or ordinary to renew the grant from time to time, or a further
 sum not exceeding fifteen pounds *per annum*, in lieu of such house, garden, and
 stable, in case there shall be none such, or it shall appear to the bishop or or-
 dinary not to be convenient to allot and assign the same to such curate ; which
 said stipend or stipends shall be paid and recovered in such and the same man-
 ner as the stipend payable under and by virtue of the said recited act : pro-
 vided always, That the said house, garden, and stable, shall be for the use of
 the said curate and his family only during his actual residence in the said rec-
 tory and vicarage house.

In what case
 bishop, &c. may
 appoint a sti-
 pend to curates,
 with use of par-
 sonage house, or
 allowance.

2. Provided also, and be it further enacted, That the bishop or ordinary
 shall have power, at any time, under his hand and seal, to revoke the grant to
 the said curate of the said house, garden, and stable, or any of them ; and also
 to insert in such grant such terms and conditions to be observed on the part
 of the curate as he shall think reasonable ; and also that the curate shall
 peaceably deliver up the possession of the premises granted to him at the
 expiration or other sooner determination of the grant thereof ; and in case he
 shall refuse so to do, he shall forfeit and lose to the rector or vicar all such
 parts of his stipend as shall then be unpaid, or shall thereafter become due, and
 also the sum of fifty pounds, to such rector or vicar, and which shall be reco-
 verable in an action of debt.

Grant of house
 may be revoked.

Not delivering
 it up.

Penalty.

3. And whereas by an act, passed in the first year of his late most gracious Majesty
 King George the first, it was enacted, That all churches, curacies, and chapels,
 which should be augmented by the governors of the late Queen Anne’s bounty,
 should be from thenceforth perpetual cures and benefices : and whereas it is
 expedient that such augmented churches, curacies, and chapels, should be sub-
 ject to the same rules as benefices with respect to the avoidance of other bene-
 fices ; be it further enacted, That such augmented churches, curacies, and
 chapels, shall be considered in law as benefices presentative, so as that the
 license thereto shall operate in the same manner as institution to such bene-
 fices, and shall render voidable other livings in like manner as institution to
 the said benefices ; and that it shall be lawful for the bishop or ordinary within
 whose jurisdiction such augmented church, curacy, or chapel, shall lie, to ap-
 point under his hand and seal any stipend or allowance for the officiating
 curate to be nominated or employed by the perpetual curate or incumbent
 thereof, not exceeding seventy-five pounds *per annum*, for which payment the
 said curate shall have the same and like remedies as are hereinbefore given to
 the curates of rectors and vicars.

1 G. 1. stat. 2.
 c. 10. § 4.

Churches aug-
 mented by
 Queen Anne’s
 bounty, deemed
 benefices pre-
 sentative.

4. And whereas doubts have been lately entertained, whether the acceptance
 of such augmented churches, curacies, and chapels, has rendered voidable in
 law such other benefices as the incumbents possessed before their acceptance
 of the same : and whereas it is fit that many incumbents who have accepted
 such

Benefices held
 with augmented
 cures held by
 present incum-
 bents.

1796.



Bishop, &c. may apportion stipend to officiating curates of perpetual curacies not augmented.

Ordinary may licence curates employed, though no nomination made to him by incumbent.

May revoke licence.

Appeal.

such churches, curacies, and chapels, should be quieted in the possession of the benefices they enjoyed before the acceptance of the same: it is hereby enacted and declared, That all such benefices as were held in conjunction with augmented cures before the passing of this act, shall continue to be held by the present incumbents therewith; and that it shall not be lawful to present to the said benefices until they shall become void or voidable by death or cession, or by other lawful cause of avoidance, arising after the passing of this act.

5. And whereas many perpetual curacies, although not augmented by the bounty of Queen Anne, have nevertheless become considerable in value by the improvement of the tithes or glebe of which they happen to be endowed, or by other circumstances; be it further enacted, That the bishop or ordinary within whose jurisdiction they lie, shall have the like power, and under the like limitations, and with the like remedies, in apportioning the stipends to be paid to the said officiating curates by the curates or incumbents of perpetual curacies, as is hereinbefore given respecting the apportionment of the stipends to the curates employed in perpetual cures augmented.

6. And whereas it is expedient that the authority of ordinaries to license curates, and to remove licensed curates, should be further explained, enlarged, and confirmed; be it enacted and declared, That it shall be lawful for the ordinary to license any curate who is or shall be actually employed by the rector, vicar, or other incumbent of any parish church or chapel, although no express nomination of such curate shall have been made, either in words or in writing, to the ordinary by the said rector, vicar, or other incumbent; and that the ordinary shall have power to revoke, summarily and without process, any license granted to any curate employed within his jurisdiction, and to remove such curate, for such good and reasonable cause as he shall approve; subject, nevertheless, to an appeal, as well in the case of a grant of a license to a curate who has not been nominated, as in the revocation of a license granted to a curate; such appeal to be made, in either case, to the archbishop of the province, and to be determined in a summary manner.



1800.

39 & 40 Geo. 3. c. 41.

An Act for explaining and amending several Acts, made in the thirty-second year of King Henry the Eighth, and the first, thirteenth, and fourteenth years of the reign of Queen Elizabeth, so far as respects Leases granted by Archbishops, Bishops, Masters and Fellows of Colleges, Deans and Chapters of Cathedral and Collegiate Churches, Masters and Guardians of Hospitals, and others having any spiritual or ecclesiastical living or promotion.—[May 16, 1800.]

32 H. 8. c. 28.
1 Eliz. c. 19.
13 Eliz. c. 10.
14 Eliz. c. 11.

WHEREAS doubts have arisen whether archbishops, bishops, masters and fellows of colleges, deans and chapters of cathedral and collegiate churches, masters and guardians of hospitals, and others having any spiritual or ecclesiastical living or promotion, who are by several acts, passed in the reigns of their late Majesties King Henry the Eighth and Queen Elizabeth, restrained from granting any leases of their estates whereon the accustomed yearly rent is not reserved, can lawfully grant separate leases of parts of lands or tenements which have been usually demised by one lease and under one rent, reserving on the several parts so demised less than the rent anciently reserved on the demise of the whole, though the aggregate amount of the rents so reserved on such separate demises should be equal to or exceed the amount of the annual accustomed rent for the whole: and whereas many such separate leases have been granted, and great inconvenience may arise to persons claiming under such leases, if such leases should not be deemed valid and effectual, in case the amount of the rent anciently reserved on demises of the whole shall appear to have been reserved on the separate demises of the different parts; and the power of dividing tenements, anciently so demised in one parcel at one rent, may in many cases tend to improve the value of the estates belonging to such ecclesiastical persons and bodies respectively, as well as to the benefit of their lessees and the public; may it therefore please your Majesty that

1800.

that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That in all cases where any honours, castles, manors, messuages, lands, tithes, tenements, or other hereditaments, being parcel of the possessions of any archbishop, bishop, master, and fellows, dean and chapter, master or guardian of any hospital, or any other person or persons, or body or bodies politic or corporate, having any spiritual or ecclesiastical living or promotion, and having been anciently or accustomably demised by one lease under one rent, or divers rents issuing out of the whole, now are or shall hereafter be demised by several leases to one or several persons under an apportioned or several rents, or where a part only of such honours, manors, messuages, lands, tithes, tenements, or other hereditaments as last mentioned, is or shall be demised by a separate lease or leases, under a less rent or less rents than was or were accustomably reserved for the whole by such former lease, and the residue thereof is or shall be retained in the possession or occupation of the lessor or lessors, the several and distinct rents reserved on the separate demises of the several specific parts thereof comprised in and demised by such several leases, shall be deemed and taken to be the ancient and accustomed rents for such specific parts respectively, within the intent and meaning of an act, passed in the thirty-second year of the reign of his late Majesty King Henry the Eighth, intituled, Lessees to enjoy the Farm against the Tenants in tail; and of an act, passed in the first year of the reign of her late Majesty Queen Elizabeth, intituled, An Act giving Authority to the Queen's Majesty, upon the avoidance of any Archbishop or Bishop, to take into her hands certain of the temporal possessions thereof, recompensing the same with Parsonages impropriate and Tithes; and of another act, passed in the thirteenth year of the same Queen, intituled, Fraudulent Deeds made by spiritual Persons, to defeat their Successors of remedy for dilapidations, shall be void, &c.; and of another act, passed in the fourteenth year of the reign of the same Queen, intituled, An Act for the Continuation, Explanation, Perfecting, and Enlarging of divers Statutes.

Several rents reserved on separate demises of specific parts taken to be ancient rents.

32 H. 8. c. 28.

1 Eliz. c. 19.

13 Eliz. c. 10.

14 Eliz. c. 11.

2. Provided always, That nothing herein contained shall extend to confirm or render valid any demise made before the passing of this act, unless the several rents reserved upon the separate demises of separate parts or tenements theretofore accustomably demised under one entire lease, shall be equal to or more than the rent or rents theretofore accustomably reserved on the entire demise of the whole, or in case the whole should not be demised, but part reserved in the possession of the lessor or lessors, unless the rents reserved on the parts demised should be so far equal to or more than the whole amount of the ancient rent or rents, that the part not demised should be sufficient to answer the difference.

Proviso for demise made before act.

3. Provided also, That where the whole of any such honours, castles, manors, messuages, lands, tithes, tenements, or other hereditaments, accustomably demised by one lease, shall be demised in parts by several leases after the passing of this act, the aggregate amount of the several rents which shall be reserved by such separate leases, be not less than the old accustomed rent or rents theretofore reserved by such entire lease; and that where a part only shall be so demised by any such separate lease, and the residue shall be retained in the possession of the lessor or lessors, the rent or rents to be reserved by such separate lease or leases, shall not be less, in proportion to the fine or fines to be received on granting such lease or leases, than the rent or rents accustomed to be reserved for the whole of the said premises, was in proportion to the fine received on granting the last entire lease.

Proviso for future demises in parts.

4. Provided also, That no greater proportion of the accustomed rent be reserved by any separate lease hereby confirmed or allowed to be granted, than the part of the premises thereby severally demised will reasonably bear and afford a competent security for.

Proportion of accustomed rent.

5. Provided also, That where any specific thing, incapable of division or apportionment, shall have been reserved or made payable to the lessor or les-

Specific things reserved by lessor charged on premises, &c.

1800.

sors, his or their heirs or successors, either by way of rent, or by any covenant or agreement contained in any such entire lease, the same may be wholly reserved and made payable out of a competent part of such lands or tenements demised by any such several lease as aforesaid; and in case, in any lease already granted, and intended hereby to be confirmed, any such provision shall appear to have been made for the payment and delivery of any such sum or sums of money, stipends, augmentations, or other things as aforesaid, the same shall be deemed and taken to have been lawfully made, in case the lands and tenements charged therewith shall be of a greater annual value than the payment or other things so charged, exclusive of the rent or other annual payment reserved to the lessor or lessors.

Confirming
leases.

6. Provided further, That nothing herein contained shall extend to authorise or confirm any lease whereon no annual rent is or shall be reserved to the lessor or lessors, his or their successors or assigns.

Reservation of
rent on lease
made by master,
&c. of college,
&c.
18 Eliz. c. 6.

7. Provided also, and be it further enacted, That this act, or any thing herein contained, shall not authorise the reservation or payment of any rent or rents upon any such several lease made or to be made under authority of this act, by any master, provost, president, warden, dean, governor, rector, or chief ruler of any college, cathedral church, hall or house of learning, in the universities of Oxford and Cambridge, or by the warden or other head officer of the colleges of Winchester and Eaton, in any other manner or proportions than is required by an act passed in the eighteenth year of the reign of her said late Majesty Queen Elizabeth, intituled, An Act for Maintenance of the Colleges in the Universities, and of Winchester and Eaton.

Proviso for pay-
ments reserved
to vicars, &c.
other than les-
sors.

8. Provided also, That where any such accustomably entire leases as aforesaid shall have usually contained covenants on the part of the lessee or lessees for the payment or delivery, or shall have in any other manner subjected or charged such lessee or lessees to or with the payment or delivery of any sum or sums of money, stipend, augmentation, or other thing, to or for the use of any vicar, curate, schoolmaster, or other person or persons, other than and besides the lessor or lessors, and his or their heirs or successors, all or any such leases as shall hereafter be granted of the same lands or tenements in severalty as aforesaid, shall and may lawfully provide for the future payment and delivery of such sum or sums of money, stipends, augmentations, or other things, by and out of any part or parts of the lands or tenements accustomably charged therewith, not being of less annual value than three times the amount of the payment so to be charged thereon, exclusive of the proportion of rent or other annual payments to be reserved to the lessor or lessors.

Proviso as to
claim of vicar,
&c. to such pay-
ment in certain
cases.

9. Provided always, That nothing in this act shall extend to establish or confirm the claim of any vicar, curate, schoolmaster, or other person or persons, to any such sum or sums, salary, stipend, or other thing as aforesaid, the payment and continuance whereof shall depend only on the will of the person or persons, or body or bodies politic or corporate, granting or renewing such lease or leases respectively.

Trustees, &c. of
such leases sur-
rendering.

10. And be it further enacted, That where any person or persons now holding, or who shall hereafter hold, any such lease or leases as in this act mentioned, shall or may hold the same, or any specific part of the lands or tenements thereby demised, in trust for any other person or persons, or for any body or bodies politic or corporate, or shall have granted any under-lease or under-leases of any specific part or parts of his, her, or their respective holdings, and be under any covenant or engagement for renewal thereof to any other person or persons, body or bodies politic or corporate, when and as often as his, her, or their own lease or leases shall be renewed, it shall and may be lawful for such person or persons as first mentioned, at any time or times after the passing of this act, to surrender his, her, or their lease or leases, in order that separate and distinct leases may be granted by the original lessor or lessors of such specific parts of the same premises as shall have been held in trust, or subject to such covenants or engagements for renewal as aforesaid, to the respective under-lessees and cestuique trusts, upon fair and reasonable terms, subject to an apportionment of the accustomed rent or rents, and other pay-
ments,

ments, according to the intent and meaning of this act; and every such surrender so made, and the new leases to be granted thereon, according to the intent and meaning of this act, shall be good and effectual in law and equity, notwithstanding such under-lessees and cestuique trusts, or any of them, shall or may be infants, issue unborn, femmes covert, persons absent from the realm, or otherwise incapacitated to act for themselves, provided that such new leases respectively be for the benefit of the several persons entitled to the benefit of such surrendered lease or leases respectively, and be expressly so declared in the body of each such new leases respectively.

1800.

Proviso.

43 Geo. 3. c. 84.

1803.

An Act to amend the Laws relating to spiritual Persons holding of Farms; and for enforcing the Residence of spiritual Persons on their Benefices in England.
[7th July, 1803.]

WHEREAS many of the provisions of an act, made in the twenty-first year of the reign of his Majesty King Henry the Eighth, intituled, 'Spiritual Persons abridged from having Pluralities of Livings, and from taking of Farms, &c., and other the laws now in force relating to spiritual persons residing on their benefices, have been found inconvenient; and it is expedient that certain of the provisions of the said act should be repealed, and that other provisions should be made in lieu thereof, and that the said act and laws aforesaid should be amended, and more effectual provisions made for enforcing the residence of spiritual persons on their benefices, and protecting spiritual persons from vexatious prosecutions: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, every spiritual person who shall, before the passing of this act, have incurred any pecuniary penalty or penalties, or any forfeiture or forfeitures under the said recited act, for or in respect of non-residence, or farming of lands, and against whom no action, suit, bill, plaint, or information, shall have been brought in respect thereof under the said act, shall be, and is hereby indemnified, freed, and discharged from the same, any thing in the said recited act to the contrary thereof notwithstanding; and all contracts, agreements, and leases, made by words, or otherwise, before the passing of this act, by any spiritual person, either by himself or any other to or for his use, which if made after this act would, according to the provisions thereof, be good and valid, shall, notwithstanding the said recited act, or any act, or law or laws to the contrary, be and be deemed to be as good and valid in the law, to all intents and purposes, as if the same had been made after the passing of this act.

21 H. 8. c. 13.

Spiritual persons against whom no action shall have been brought under recited act indemnified, and contracts which would be good after passing this act, valid, notwithstanding recited act.

2. And be it further enacted, That immediately from and after the passing of this act, it shall be lawful for any person or persons against whom any original writ, suit, action, bill, plaint, or information, shall have been sued out, commenced, or prosecuted, before the passing of this act, for any pecuniary penalty or penalties, or any forfeiture or forfeitures incurred or alleged to be under the said recited act, to apply to the court in which such original writ, suit, action, bill, plaint, or information, shall have been sued out, commenced, or prosecuted, if such court shall be sitting, or to any judge of any such court when not sitting, for an order that such writ, suit, action, bill, plaint, or information, shall be discontinued, upon payment of the sum of ten pounds in every case where a verdict shall be obtained, together with the costs; and where no verdict shall have been obtained, upon payment of the costs incurred up to the time of such application being made, all such costs to be taxed as between attorney and client, according to the practice of such court, and every such court or judge is hereby authorised and required, upon such application, to make such order as aforesaid; and upon the making such order, and payment of such costs as aforesaid, such writ, suit, action, bill, plaint, or information,

Persons sued under recited act, may apply to the court, if sitting, or to a judge, if not sitting, to stay proceedings upon certain conditions.

1803.

Till such application actions may proceed, notwithstanding this act, or 41 G. 3. (U. K.) c. 102, &c.

Court or judge may order any suit commenced, on or subsequent to July 1, 1801, to be discontinued.

Spiritual persons may take houses, &c. though not in a city, &c. and such as have not sufficient glebe, may by consent of the bishop take farms.

May hold estates as property, but not any farm for cultivation, unless under a lease granted on or before January 1, 1803, or by consent of the bishop.

formation, shall be forthwith discontinued; and in every case, until such application shall be made as aforesaid, it shall be lawful for the plaintiff or plaintiffs, in any such original writ, suit, action, bill, plaint, or information, to proceed therein as if this act, or an act, passed in the forty-first year of the reign of his present Majesty, intituled, An Act to stay, until the twenty-fifth day of March, one thousand eight hundred and two, Proceedings in Actions under the Statute of King Henry the Eighth, 'for abridging spiritual Persons 'from having pluralities of Livings, and from taking of Farms,' had not been passed; any thing in this act, or the said last-recited act, or in any other act or acts continuing the same, to the contrary thereof notwithstanding.

3. Provided nevertheless, That in all cases in which any such writ, suit, action, bill, plaint, or information, shall have been sued out or commenced at any time on or subsequent to the first day of July, one thousand eight hundred and one, it shall be competent to such court or judge as aforesaid, to make such order as aforesaid for discontinuing the same, without payment of any costs; and upon making such order, such writ, suit, action, bill, plaint, or information, shall be forthwith discontinued.

4. And be it further enacted, That from and after the passing of this act, it shall be lawful for any spiritual person to take to farm to himself, or to any person or persons for his use, by lease, grant, words, or otherwise, for term of life, for term of years, or at will, any messuage, mansion, or dwelling-house, with or without orchards, gardens, and other appurtenances, although not in any city, borough, or town; any thing in the said recited act, or any other act to the contrary thereof notwithstanding; and it shall also be lawful for any spiritual person having or holding any donative, perpetual curacy, or parochial chapelry, not having any sufficient or convenient glebe or demesne lands annexed to, or in right of, or by reason of his benefice or cure or chapelry, or for any stipendiary curate, or any unbeneficed spiritual person, with the consent or approbation of the bishop of the diocese, signified in writing, to take to farm to himself, or to any person or persons to his use for a limited term of years, any farm or farms, lands, tenements, or hereditaments, that may, under all the circumstances, appear to such bishop proper to be taken, held, or occupied by any such spiritual person, for the convenience and accommodation of his household and hospitality only, without being subject or liable to any pains, penalties, or forfeitures, under the said first recited act, or any other act by reason thereof; any thing therein contained to the contrary notwithstanding: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorise any non-residence of any such spiritual person as aforesaid.

5. And be it further enacted, That from and after the passing of this act, it shall be lawful for any spiritual person or persons, by himself or themselves, or any other to his or their use, to have, hold, use, or occupy in farm, any manors, lands, tenements, or hereditaments, demised, leased, or granted to such spiritual person or persons, as the property or estate of such spiritual person or persons; or to take, purchase, receive, or hold, as the property and estate of such spiritual person, any lease or leases for life or lives, or for term or terms of years, absolute or determinable on any life or lives, or to take any annual rent, or other annual advantage or profit by occasion of any lease or farm of any manors, lands, tenements, or hereditaments, the property or estate of any such spiritual person or persons belonging to him or them, either in his or their own right, or in the right of any other person or persons, or in right or by reason of his or their having or holding any spiritual dignity or benefice, or so taken, purchased, received, or held, as aforesaid, as the property or estate of such spiritual person, without being subject to any pains, penalties, or forfeitures whatever, under the said first recited act, or any other act, any thing therein contained to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorise any spiritual person, having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, or serving a stipendiary curacy, to take, receive, or hold any such manors, lands, tenements, or hereditaments,

1803.

ditaments, after the passing of this act, for the purpose of occupying or to occupy the same, for the cultivation thereof, or procuring profit therefrom, by himself or any bailiff or bailiffs, or servant or servants for his use, unless the same shall have been taken, received, or holden under a lease granted to such person on or before the first day of January, one thousand eight hundred and three, or unless by the consent or approbation of the bishop as aforesaid, signified in writing.

6. And be it further enacted, That from and after the passing of this act, it shall be lawful for any spiritual person, by himself, or by any other for him or to his use, to bargain, and buy or sell again for any lucre, gain, or profit, any manner of cattle or corn that may be necessary, proper, or convenient to be bought, sold, kept, or maintained by such spiritual person, or any other person for him or to his use, for the occupation, manuring, improving, pasturage, or profit of any farms, lands, tenements, or hereditaments, that may under and by virtue of any law or laws now in force, or under any of the provisions of this act be lawfully held and occupied, possessed, or enjoyed, by such spiritual person, or any other for him or to his use, without being subject to any pains, penalties, or forfeitures, by reason thereof, under the said first-recited act, or any other act, or any thing therein contained to the contrary thereof notwithstanding: Provided always, that nothing in this act contained shall extend, or be construed to extend, to authorise any such spiritual person to buy or sell any cattle as aforesaid, or corn, in person, in any market, fair, or place of public sale.

May buy or sell cattle or corn for the occupation of farms.

7. And be it further enacted, That from and after the passing of this act, it shall be lawful for any spiritual person having or holding any vicarage or perpetual curacy, or for the stipendiary curate thereof respectively, to occupy by himself or by any other to his use in ferm, of the lease or grant of any person or persons, the impropriate parsonage, rectory, or vicarage respectively, of the parish of which such spiritual person shall be the vicar, or perpetual curate, or stipendiary curate, or any part or parts thereof respectively, or to take any profit or rent out of any such farm, without being subject to any pains, penalties, or forfeitures, by means thereof, under the said first-recited act; any thing therein contained to the contrary thereof notwithstanding.

Vicars or curates may take leases of the impropriate parsonages of their parishes;

8. Provided nevertheless, That in such cases in which such impropriate parsonage, rectory, or vicarage, or such part or parts thereof as shall be so occupied as aforesaid, shall not at any time before the passing of this act, have been so occupied by the same, or any other such spiritual person as aforesaid, such person shall remain liable to such pains, penalties, and forfeitures, unless he shall have obtained the license of the bishop for so occupying the same.

but where not occupied by a spiritual person before passing this act, the license of the bishop necessary.

9. And be it further enacted, That any clergyman, possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall be licensed or otherwise exempted from residence under this or any other act, may take to ferm and occupy in the parish where he resides, or any adjoining parish, such lands for the convenience and accommodation of his household and hospitality only, as the bishop of the diocese in which he resides may allow by any writing under his hand.

Clergyman licensed, or exempted from residence, may occupy, where he resides, such lands as the bishop may allow.

10. And be it further enacted, That an act, made in the thirteenth year of the reign of Queen Elizabeth, intituled, An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure, together with all and every explanations, additions, and alterations thereof, made by several statutes in the fourteenth, eighteenth, and forty-third years of her said Majesty's reign, and also so much of an act made in the third year of the reign of King Charles the First, intituled, An Act for Continuance and Repeal of divers Statutes, whereby the same were made perpetual, be from henceforth repealed.

13 Eliz. c. 20. and its continuing statutes repealed.

11. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to deprive any spiritual person of any privilege, indemnity, or permission, as to the taking, having or holding any farms or lands to which any such spiritual person was or would be entitled unto, under any of the provisions of the said recited act of his said late Majesty King Henry the Eighth, or any otherwise howsoever.

This act shall not deprive spiritual persons of any privileges.

12. And be it further enacted, That from and after the passing of this act,

Penalty for non-residence under

1803.

recited act 21
H. 8. c. 13. re-
pealed, and
other penalties
imposed.

25 H. 8. c. 16.

28 H. 8. c. 13.

33 H. 8. c. 28.

so much of the said first-recited act as imposes the penalty of ten pounds, in the said act mentioned, on any spiritual person therein described, who shall not keep residence on one of his dignities, prebends, or benefices, but absent himself wilfully by the space of one month together, or by the space of two months, to be accounted at several times in any one year, shall be and the same is hereby repealed; and that, from and after the passing of this act, every spiritual person, being possessed of any archdeaconry, deanery, or other dignity, prebend, benefice, donative, or perpetual curacy, or parochial chapelry, who shall, without sufficient cause, as in the said first-recited act, or under an act passed in the twenty-fifth year of the reign of King Henry the Eighth, intituled, An Act that every Judge of the High Courts may have one Chaplain beneficed with Cure, or under another act, passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled, The Bill for Non-residence of spiritual Men and their Benefices, or under another act, passed in the thirty-third year of the reign of King Henry the Eighth, intituled, An Act for the Chancellor of the Duchy of Lancaster and others to have Chaplains, is specified, or such other sufficient cause as would exempt such spiritual person from any of the pains, penalties, and forfeitures under the said recited acts for any non-residence, and who shall not have any such license or exemption as is in this act mentioned for that purpose, wilfully absent himself therefrom for the space of three months together, or to be accounted at several times in any one year, and make his residence and abiding at any other place or places, except at some other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of which he may be possessed, shall, when such absence shall exceed such period as aforesaid, and not exceed six months, forfeit and pay one third of the annual value (deducting therefrom all outgoings, except any stipend paid to any curate) of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, from which he shall so absent himself as aforesaid; and when such absence shall exceed six months, and not exceed eight months, one half of such annual value; and when such absence shall exceed eight months, two-thirds of such annual value; and when such absence shall have been for the whole of the year, three fourths of such annual value; to be recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or the courts of great sessions in Wales, wherein no essoign, privilege, protection, or wager of law, or more than one imparlance shall be allowed; and the whole of every such penalty or forfeiture shall go and be paid to the person or persons who shall inform and sue for the same, together with such costs of suit as shall be allowed, according to the practice of the court in which such action shall be brought; provided, that no parsonage that has a vicar endowed, or perpetual curate, and having no cure of souls, shall be taken to be or be comprehended under the name of benefice, within the true intent and meaning, or for the purposes of this act.

No parsonage
that hath a vicar
endowed, &c.
shall be deemed
a benefice.

The court in
which any ac-
tion shall be de-
pending, may
require the dio-
cesan to certify
the reputed an-
nual value of be-
nefices, &c.

13. And be it enacted, That the court in which any such action, bill, plaint, or information, shall be depending, may and shall, upon application made for that purpose, require by rule or order of the said court, or any judge thereof, the archbishop or bishop of the diocese, within the limits of which the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, shall be locally situate, or to whom the same shall be subject, according to the provisions of this act, for or by reason of non-residence, in, at, or upon which the penalties and forfeitures shall be sought to be recovered by such action, bill, plaint, or information, to certify in writing under his hand to the said court; and also to the party for that purpose named in the said rule or order, the reputed annual value of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry; and upon such rule or order being left with such archbishop or bishop, or the register of such archbishop or bishop, such archbishop or bishop shall accordingly so certify such reputed annual value, and such certificate shall in all subsequent proceedings upon such action, bill, plaint, or information, be received and taken as evidence of the annual value of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, respectively, for the purposes of this act, without prejudice never-
theless

1803.

theless to the admissibility or effect of any such other evidence as may be offered or given respecting the actual value thereof.

14. Provided also, and be it further enacted, That no spiritual person being possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall have made his residence and abided at his said dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the space of one whole year, without wilful absence therefrom, for any longer time than three months together, or in the whole at several times, shall be liable to any of the pains, penalties, or forfeitures in this act or the said recited act contained, for any previous non-residence, unless the action for the recovery of such penalties or forfeitures shall have been actually commenced against such person, previous to his having completed such residence for one year, in the manner herein specified.

No person, having resided a year without absence for more than three months, shall be liable for any previous non-residence, unless the action be commenced before he has so resided.

15. And be it further enacted, that no spiritual person having or holding any office, in such manner as the same under any of the provisions of the said first recited act, or of an act, passed in the twenty-fifth year of the reign of King Henry the Eighth, intituled, An Act that every Judge of the High Courts may have one Chaplain beneficed with Cure, or of another act passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled, The Bill for Non-Residence of Spiritual Men and their Benefices, or of another act, passed in the thirty-third year of the reign of King Henry the Eighth, intituled An Act for the Chancellor of the Duchy of Lancaster and others to have Chaplains, would exempt such spiritual persons from residence, or from the penalties and forfeitures in the said acts contained for non-residence, or actually serving as a chaplain of the House of Commons, or as clerk of his Majesty's closet, or as a deputy-clerk thereof, during the time of their respective attendance, or as a chaplain-general of his Majesty's forces, or brigade-chaplain on foreign service, or chaplain on board any of his Majesty's ships, or of his Majesty's dock-yards, or in any of his Majesty's garrisons, or chaplains of his Majesty's corps of artillery, during the times of attending the duties of such offices respectively, or as chaplain to any British factory, or in the household of any British ambassador or public minister residing abroad, during the time of his actually residing in such factory or household, and performing there at all due times and seasons the duties of such his office, or as chancellor or vicar-general, or in his absence the principal surrogate or official in any ecclesiastical court of any diocese, whilst they are residing in the places where their respective offices are exercised, or as minor canon, or vicar choral, or priest vicar, or any such other public officer in any cathedral or collegiate church, during the times for which they may be required by the canons or local statutes thereof to reside at such cathedral or collegiate church, and actually reside and perform duty at the same, or as deans, sub-deans, priests, or readers in his Majesty's royal chapels at Saint James's and Whitehall, or as reader in his Majesty's private chapel at Windsor or elsewhere, or as chaplain at the royal military asylum at Chelsea, or royal military college at High Wycombe, or teacher at the royal military academy at Woolwich, or chaplains at the royal hospitals at Greenwich and Chelsea, or as chaplains to the royal hospitals for seamen at Haslar and Plymouth, whilst they shall respectively reside and perform the duties of their respective offices, or as a preacher or reader in any of the inns of court or at the rolls, or as bursar, dean, vice-president or public tutor or chaplain, or other such public officer, in any college or hall in either of the universities of Oxford or Cambridge, during the period for which he may respectively be required by reason of any such office, to perform the duties of any such office, and actually shall perform the duties of the same, or as public librarian or public registrar, or proctor, or public orator, or other such public officer, in either of the said universities, during the period for which he may respectively be required, by reason thereof, to perform the duties of any such office, and actually shall perform the duties of the same, or as fellow of any college in either of the universities, or of Eton or Winchester college, during the time for which he may be required to reside by any charter or statute, and actually resides therein, or as warden or provost of Eton or Winchester college, during the time for which they may be respectively required to reside,

Certain persons exempted from penalties for non-residence, (See ante, § 12.)

1803.

Persons entitled under 28 H. 8. c. 13. to privilege of non-residence till 40 years, shall not be entitled to it after 30.

No penalty shall be levied personally where it can be recovered by sequestration of the benefice in three years.

Bishops in England may grant licenses for non-residence in certain cases.

Cases in which any bishops may grant licenses for non-residence.

reside, or shall actually reside therein, or as schoolmaster or usher in the same, or as schoolmaster or usher of Westminster school, shall be liable to any of the pains, penalties, or forfeitures in the said first recited act or this act contained, for or on account of any non-residence on any dignity, prebend, benefice, donative, or perpetual curacy; any thing in the said act or this act contained to the contrary notwithstanding.

16. And be it further enacted, that from and after the passing of this act, no person or persons mentioned in an act, passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled, The Bill for Non-Residence of Spiritual Men, and their Benefices, and entitled under the provisions of the said act or any other act to the privilege and liberty of non-residence until after and above the age of forty years, shall be entitled to enjoy the privilege and liberty of non-residence after or above the age of thirty years, without prejudice nevertheless to any of its exceptions and savings contained in the said act; any thing in the said act contained to the contrary notwithstanding.

17. And be it further enacted, that no penalty or costs incurred by any spiritual person by reason of any non-residence on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, shall be levied by execution against the body of such person, whilst he shall hold the same or any other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, out of the profits of which the same can be levied by sequestration, within the term of three years; and in case the body of any such spiritual person shall be taken in execution for the same, the court in which the same was recovered, or any judge thereof, may and shall upon application made for that purpose, discharge the party from such execution, in case it shall be made to appear to the satisfaction of such court or judge that such penalty and costs can be levied as aforesaid.

18. And be it further enacted, that from and after the passing of this act, it shall be lawful for the several bishops respectively, in that part of the united kingdom of Great Britain and Ireland called England, upon application made for that purpose by petition in writing, by any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, locally situated within their respective dioceses, upon such proofs as to any facts stated in any such petition as any such bishop may think necessary, if he shall require it, by affidavit made before any surrogate or master extraordinary in chancery (which oath any surrogate or master extraordinary in chancery is hereby authorised and required to administer), to grant in such cases as are hereinafter enumerated, where on due consideration of all the circumstances stated in any such application, and verified to the satisfaction of the bishop as aforesaid, such bishop shall in his discretion think fit to grant the same, a license in writing under his hand, expressing the cause of granting the same, for the non-residence of such spiritual person on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the purpose of exempting such person from any pecuniary penalties or forfeitures; under and subject nevertheless to the regulations, provisions, and restrictions in this act contained.

19. And be it further enacted, that it shall and may be lawful for any bishop to grant licenses to any spiritual persons having any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, within his diocese, to reside out of the proper house of residence, or out of the parish, and within such distance therefrom, as the case may appear to such bishop to require, if, upon the consideration of all the circumstances of any such case, such bishop shall in his discretion think the same fit and proper, in the several cases hereinafter mentioned; (that is to say), to any spiritual person who shall be prevented from residing in the proper house of residence, or in the parish, by actual illness or infirmity of body of himself, or wife or child, making part of, and residing with him as part of his family; and also to any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, whereupon or wherein there shall be no house of residence, or where the house of residence shall be unfit for the residence of such ecclesiastical person, such unfitness not being occasioned by any negligence, default, or other misconduct.

1803.

misconduct of such ecclesiastical person, such spiritual person keeping such house of residence in such repair as shall be to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and having or possessing or occupying, in the parish of the same respectively, any mansion or messuage belonging to himself or any relative, to reside in such mansion or messuage, such spiritual person keeping the house of residence, and other buildings belonging thereto, in good and sufficient repair and condition, to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, of small value, and serving as a stipendiary curate elsewhere, with the license of the bishop of the diocese, and providing for the serving of such his benefice, donative, perpetual curacy, or parochial chapelry, to the satisfaction of the bishop of his diocese; and also to any master or usher of any endowed school duly licensed by the bishop, and actually employed in teaching therein, or to the master of any other school who now is or shall be, within one month after the passing of this act, duly licensed by the bishop; and also to any master or preacher of hospitals or incorporated charitable foundation, during the period for which he may be required to reside by any charter or statute of any such hospital or incorporated charitable foundation, or by any other lawful authority, in the same, and shall actually reside and perform his duties therein; or to any person holding any endowed lectureship, or endowed chapelry, or endowed preachership, and performing and executing the duties thereof respectively; or to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry of small value, and serving as preacher in any proprietary chapel in cities or towns, with the license of the bishop in whose diocese he shall so officiate; or to the librarians of the British Museum, or of Sion College; or to the trustees of Lord Crewe's charity, during the times of their personal attendance on the duties of their office: provided always, that for any such license the party obtaining the same shall not pay more to the secretary or officer of the bishop than the sum of ten shillings, exclusive of any such stamps as may be required by law: provided always, that if any spiritual person applying to any bishop for any such license, shall think himself aggrieved by the refusal thereof, it shall be lawful for such spiritual person to appeal to the archbishop of the province, who shall forthwith, either by himself, or some commissioner or commissioners appointed from among the other bishops of his province, under his hand, make or cause to be made, inquiry into the same, and by writing, signed by himself, confirm such refusal, or grant a license under this act, as shall seem just and proper: provided nevertheless, that the party appealing shall give security to the bishop for the payment of such reasonable expenses occasioned by the appeal, as the archbishop, or his commissioner or commissioners, shall award.

Fee for licenses.

Persons aggrieved by refusal of licenses, may appeal to the archbishop.

Security by party appealing.

20. And be it further enacted, that, from and after the passing of this act, it shall be lawful for any such bishop as aforesaid, in any cases not hereinbefore enumerated, in which, under all the circumstances of any such case, such bishop shall think it expedient to grant to any such spiritual person possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, a license to reside out of the proper house of residence, or out of the parish, as the case may be, or as the case may appear to such bishop to require, and to assign, in any case in which the stipendiary curate may be employed to do the duty of such spiritual person, such salary as he shall judge fit to appoint, due respect being had to the value of the benefice, donative, perpetual curacy, or parochial chapelry, and to all the other circumstances of the case: provided always, that in every such case the nature and special circumstances thereof, and the reasons that have induced such bishop to grant such license as aforesaid, shall be forthwith transmitted to the archbishop of the province to which such bishop shall belong, who shall forthwith, by himself, or by some commissioner or commissioners appointed for that purpose from among the bishops of such province, by writing under his hand, which commissioner or commissioners is and are thereupon authorised to take upon himself or themselves the execution of the said commission, examine into such case, and make such inquiries as to any parti-

In cases not enumerated, bishops may grant licenses, and assign salaries to curates employed.

The reasons for granting such licenses shall be transmitted to the archbishop for examination and allowance.

1803.

Licenses shall not be void by the death or removal of the grantor, unless revoked by the successor.

Archbishops, in their respective dioceses, may grant licenses.

Fees and charges may be ordered to be paid by appellants.

Costs may be recovered by sequestration.

Licenses may be revoked.

No license to be in force more than two years.

Copies of licenses or revocations shall be filed in the registry of the diocese, and a list kept for inspection; and copies of such licenses and revocations shall be transmitted to churchwardens, and publicly read at the first visitation.

culars relating thereto, as such archbishop, or commissioner or commissioners so appointed as aforesaid, may think necessary; and after such inquiries made by himself, or where the same shall be made by such commissioner or commissioners, after a return of the substance thereof, in writing, to such archbishop, such archbishop shall thereupon allow or disallow such license, in the whole or in part, or make any alteration therein as to the period for which the same may have been granted, or otherwise, and likewise as to the stipend assigned to the curate, as to such archbishop shall seem fit; and no such license shall be good, valid, or effectual under this act for any purpose whatever, unless it shall have been so allowed and approved by such archbishop; such allowance thereof being signified by the signing thereof by such archbishop: provided always, that it shall not be necessary in such license to specify the cause of granting the same: provided also, that no license granted under this act shall be made void by the death or removal of the bishop or archbishop granting the same, but the same shall be and remain good and valid notwithstanding any such death or removal, unless the same shall be revoked by the next or any succeeding bishop or archbishop, as the case may require: provided also, that any spiritual person may appeal against any such revocation by the bishop alone, in like manner as is hereinbefore directed in case of any refusal of any license: provided also, that the respective archbishops may, in their respective dioceses of which they are bishops, grant licenses under the provisions and regulations in this act contained, in all cases in which any licenses may be granted by any bishop under this act, either by his own authority, or with the allowance and approval of the archbishop as aforesaid: provided also, that it shall be lawful for any such archbishop to order and direct such reasonable fees and charges to be paid by any such spiritual person appealing as aforesaid, in respect of any such proceedings as aforesaid, as he shall in his discretion think fit: provided always, that in every case when any costs and charges directed by such archbishop or bishop as aforesaid shall remain unpaid for the period of twenty-one days after demand thereof left at the usual or last place of abode of the person liable to the payment, it shall be lawful for such bishop or archbishop respectively to cause the same to be recovered by sequestration of the profits of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of such spiritual person as aforesaid, and which sequestration such archbishop or bishop are respectively hereby empowered to issue.

21. Provided always, and be it further enacted, that it shall be lawful for any bishop or archbishop, who shall have granted any license for non-residence as aforesaid, or any successor or successors of any such bishop or archbishop, to revoke any such license, in any case in which it may appear to him or them proper and expedient to revoke the same: provided also, that no license for non-residence granted under this act shall continue in force for more than two years from the granting thereof.

22. And be it further enacted, that every such bishop or archbishop, who shall grant or revoke any license under this act, shall and he is hereby required to cause a copy of such license or revocation to be filed in the registry of the diocese within which such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof any such license shall be granted or revocation made, shall be locally situate; and an alphabetical list of such licenses and revocations shall be made out by the register of the said diocese, and entered in a book, and kept for the inspection of all persons, upon payment of the sum of two shillings, and no more; and a copy of every such license and revocation, with respect to any benefice, donative, perpetual curacy, or parochial chapelry, shall be transmitted to the churchwardens of the parish to which the same relates, within one month after the grant of such license or revocation thereof, to be by them deposited in the parish chest; and a copy of the same shall likewise be publicly read at the visitation of the archdeacon of the archdeaconry within which the benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof the license shall have been granted or revocation made, shall be locally situate, immediately next succeeding the granting or revocation thereof.

23. Provided

1803.

23. Provided also, and be it further enacted, that every archbishop who shall confirm in manner directed by this act any license or licenses in any case or cases not enumerated in this act, or who shall grant any license in his own diocese, shall annually, on or before the thirty-first day of January in each year, transmit to his Majesty in council a list of all such licenses so confirmed or granted respectively as aforesaid, in the year ending on the last day of December preceeding such thirty-first day of January; and shall, in every such list, specify the reasons transmitted to him by the bishops of the several dioceses, for granting the said licenses, and the reasons which have induced him to confirm the same, and also the reasons which have induced him to grant any such license as aforesaid within his own diocese; and it shall be lawful for his Majesty in council, by any order made for that purpose, to revoke and annul any such license; and if his Majesty in council shall think fit so to do, the same shall be transmitted to the archbishop who shall have confirmed or granted such license, who shall thereupon cause a copy of every such order made in relation to any license confirmed by him as afore-mentioned to be transmitted to the bishop of the diocese in which such license shall have been granted, who shall thereupon cause a copy of the mandatory part of the said order to be filed in the registry of such diocese, and a like copy to be delivered to the churchwardens of the parish to which the same relates, in manner hereinbefore directed as to licenses under this act; and every such archbishop shall cause a copy of the mandatory part of every such order, made in relation to any such license as aforesaid granted by him in his own diocese, to be in like manner filed in the registry of his diocese, and a like copy also to be delivered to the churchwarden of the parish to which such license shall relate, in manner before mentioned.

A list of licenses confirmed by the archbishop, or granted in his own diocese, shall be annually transmitted to the King in council, who may revoke licenses, &c.

24. Provided always, that after such license shall have been so revoked by his Majesty in council, the same shall nevertheless, in all questions that shall have arisen or may thereafter arise, touching the non-residence of the spiritual person to whom the same shall have been granted, between the period at which the same were granted or confirmed, and the time at which the same shall be so revoked as aforesaid, be deemed and taken to be, and to have been valid and effectual to the intents and purposes of this act.

As touching non-residence between the grant and revocation of a license, it shall be deemed valid.

25. And be it further enacted, that, on or before the twenty-fifth day of March one thousand eight hundred and five, and at the like period in every succeeding year, a return or returns shall be made, to his Majesty in council, by every such archbishop and bishop, of the names of every dignity, prebend, benefice, donative, perpetual curacy, and parochial chapelry, within their respective dioceses, or subject to their respective jurisdictions, by virtue of this act; and the names of the several persons possessing the same, who shall not have resided thereon by reason of any exemption under or by virtue of this act or any other act, or by reason of any license granted by such archbishop or bishop respectively, for any and what cause enumerated by this act; and also of all the persons possessing the same, not having any such exemption or license, who shall not have resided on such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, so far as the bishop is informed thereof; and for the purpose of enabling the archbishops and bishops to make such return as aforesaid, every person who shall be non-resident in any year subsequent to the first day of January in the year one thousand eight hundred and four, by reason of any exemption under this act or any other act, and to entitle him to which it is not necessary to obtain any license under this act, shall, within six weeks from and after the first day of January in every following year, notify the same in writing, under his hand, to the archbishop or bishop of the diocese to whose jurisdiction he is subject by this act, or otherwise, in respect of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, specifying the nature of such exemption: provided always, that it shall be lawful for the person making such notification, to deliver, or cause to be delivered to the registrar of such diocese as aforesaid, a duplicate of such notification in writing, and which duplicate such registrar is hereby required to file and preserve in the registry of such diocese; and in all cases in which any question shall arise, whether any such person as aforesaid has made such noti-

Annual returns shall be made to his Majesty in council of all benefices, &c. and of non residents without exemption or license; and every non-resident by exemption, shall yearly notify the nature of it to the diocesan.

A duplicate of such notification may be delivered to the registrar to be filed, and his certificate shall be evidence of its being made.

1803.

Persons wilfully neglecting to make notification, shall not be entitled to exemption.

License may be pleaded in bar of action; and in case of non-suit, &c. the defendant shall have costs; and in case of verdict for defendant treble costs.

By whom licenses may be granted, while a see is vacant, or the prelate absent, &c.

Act shall not exempt non-residents without license from censure; but no censure for non-residence not exceeding three months in one year, shall be put in force, nor any proceedings be admitted except at the suit of the bishop or archdeacon.

If any unlicensed person do not sufficiently reside, the bishop may issue a monition to reside, &c.

fication as is required by this act as aforesaid, a copy of such duplicate, certified under the hand of the registrar of the diocese for the time being, together with the time of filing the same, and which certificate such registrar is hereby required to give, upon application for that purpose made by or on the behalf of the party interested, shall be deemed and taken to be evidence that the party required to make such notification as aforesaid has made the same.

26. And, to the intent to enforce such persons as aforesaid from time to time duly to make such notification as aforesaid, be it enacted, that if any person shall wilfully neglect to make such notification as aforesaid, the person so neglecting shall not be or be deemed to be entitled, from and after the expiration of such six weeks, to the benefit of such exemption as aforesaid, until he shall have made such notification in writing, and such person so wilfully neglecting to make such notification as aforesaid, notwithstanding such subsequent notification, shall not be or be deemed to be entitled to such exemption in respect of any non-residence which shall have taken place between the expiration of such six weeks, and the time of making such subsequent notification; and in all cases in which any question shall arise, whether such neglect was wilful, the same shall be taken to have been wilful, unless the contrary is proved by the person claiming such exemption.

27. And be it further enacted, that it shall be lawful for any spiritual person to whom any such license for non-residence shall have been granted, and against whom any action shall thereafter be brought for any penalty or forfeiture under this or any other act, by reason of any non-residence, or any matter or thing relating whereto any license under this act has been granted, to plead such license in bar of any such action; and if the plaintiff in such suit or action shall be nonsuit, or shall discontinue any such suit or action after any plea of license shall have been pleaded thereto under this act, then and in such case the defendant in such suit or action shall have full costs of suit; and if in any such suit or action a verdict shall be given for the defendant, the defendant shall have treble costs, and have the like remedy for the same as any defendant has in any other cases to recover costs by law.

28. Provided always, and be it further enacted, that during the vacancy of any see, the power of granting licenses under this act, subject to the regulations therein contained, shall be exercised by the vicar-general of the diocese; and that during the absence of any prelate out of the realm, or such infirmity as disables him from exercising in person the functions of his office, it shall be exercised by such person or persons as is or are lawfully empowered to exercise his general jurisdiction in the diocese.

29. And be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to exempt any person or persons from any canonical or ecclesiastical censures, or affect any proceedings that shall hereafter be instituted in any ecclesiastical court, in order to cause the same to be inflicted in relation to the non-residence of any spiritual person, having or holding any benefice, donative, perpetual curacy, or parochial chapelry, not being duly licensed according to the provisions of this act to be absent therefrom, nor having any other lawful cause of absence: provided always, that from and after the passing of this act, no such censures by reason of any non-residence, not exceeding three months in any one year, shall be put in force, nor shall any proceeding be admitted in any ecclesiastical court against any such spiritual person for such non-residence not exceeding three months in any one year, at the suit or instance of any person or persons other than the archbishop, bishop, or archdeacon only of the diocese and archdeaconry within such benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof such non-residence shall have taken place, shall be locally situated; any thing in any law or laws, or ecclesiastical canon or canons, to the contrary thereof notwithstanding.

30. And be it further enacted, that in every case in which it shall appear to any such bishop or archbishop as aforesaid, that any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and not being licensed according to this act to be absent therefrom, nor having any other lawful cause of absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such bishop or archbishop to issue, or cause

1803.

cause to be issued, a monition, to such spiritual person, forthwith to proceed to and reside thereon, and perform the duties thereof, and to make a return to such monition within a certain number of days after the issuing thereof; so as that in every such case there shall be thirty days between the time of delivering such monition to such spiritual person, or leaving the same at his then usual or last place of abode; or if not there to be found, with the officiating minister, or one of the churchwardens, and also at the house of residence (if any such there be) belonging to such benefice, donative, perpetual curacy, or parochial chapelry, to which any such spiritual person shall be required by such monition to proceed and reside thereon, and the time specified in such monition for the return thereto; and every such monition shall immediately on the issuing thereof be filed in the registry, and open for inspection on the payment of two shillings, and no more; and the spiritual person to whom any such monition shall be sent under this act, shall, within the time specified for that purpose, make a return thereto; and it shall be lawful for the bishop or archbishop to whom any such return shall be made, to require such return, or any facts contained therein, to be verified by the oath of such spiritual person, or others, to be taken before some surrogate or master extraordinary in chancery, which oath any such surrogate or master extraordinary in chancery is hereby authorised and required to administer, on application being made for that purpose; and in every case where no such return shall be made, or where such return shall not state such reasons as shall be deemed satisfactory by such bishop or archbishop for the non-residence of the spiritual person to whom such monition shall have been sent as aforesaid, or where the same or any of the facts contained therein shall not be so verified upon oath as aforesaid, when the same shall have been required, then and in such case it shall be lawful for such bishop or archbishop to issue an order in writing, under his hand and seal, to require such person to proceed to and reside as aforesaid, within thirty days after such order in writing, or a copy thereof, shall have been delivered or left in like manner as is hereinbefore required as to monitions; and in case of non-compliance, it shall be lawful for such bishop or archbishop to sequester the profits of such benefice, donative, perpetual curacy, or parochial chapelry of such spiritual person as aforesaid, until such order shall be complied with, or such sufficient reasons for non-residence stated and proved as aforesaid; and to direct, by any order to be made for that purpose under his hand, the application of such profits, after deducting the necessary expenses of serving the cure, either in the whole or in such proportion as he shall think fit, in the first place, to the payment of such reasonable expenses as shall have been incurred in relation to such monition and sequestration, and in the next place towards the augmentation or improvement of any such parsonage, vicarage, donative, or perpetual curacy, or the house of residence thereof, or any of the buildings and appurtenances thereof, or towards the improvement of any of the glebe or demesne lands thereof; or may order and direct the same, or any portion thereof, to be paid to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, to be applied for the purpose of such augmentation as such bishop or archbishop shall in his discretion, under all the circumstances, think fit and expedient; and it shall also be lawful for any such bishop or archbishop, within six months after such order for sequestration, or within six months after any money shall have been actually levied by such sequestration, to remit to any such spiritual person any part or proportion of such sequestered profits, or cause the same or any part thereof that shall have been paid or directed to be paid to such governors of Queen Anne's bounty to be repaid to such spiritual person, which repayment the said governors are hereby authorised and required, upon an order under the hand of any such bishop or archbishop, to make out of any money then in their hands, or if no money shall then be in their hands, out of the next money that shall come to their hands, in any case in which by reason of the subsequent obedience of any such spiritual person to any such monition or order, or the stating and proving such sufficient reasons as aforesaid, such bishop or archbishop shall think the same proper: provided always, that when any such spiritual person shall

Returns shall be made to monitions, upon oath, if required.

Where no return or satisfactory return shall be made, the bishop may order residence, and if disobeyed, may sequester and apply the profits of the benefice.

1803.

Appeal against sequestrations may be made to the archbishop.

Appellant shall give security.

Persons returning to residence on monition, shall pay the costs.

If any person returning to residence on monition, shall before six months afterwards begin to absent himself, the bishop may, without monition, sequester the profits of the benefice.

If a clerk shall continue under sequestration three years, or incur three sequestrations within that period, the benefice shall become void.

shall think himself aggrieved by reason of any such sequestration issued by any bishop, it shall be lawful for any such spiritual person, within fifteen days after the making any order for any such sequestration as aforesaid, and upon such notice thereof to be served in like manner as the monition hereinbefore directed, to appeal to the archbishop of the province to which such bishop shall belong, who shall forthwith, either by himself or some commissioner or commissioners appointed from among the bishops of his province for that purpose, under his hand and seal, make or cause to be made due inquiry into the same, and make such order therein or relating thereto, or to the profits that shall be so sequestered as aforesaid, for the return to such spiritual person of the same or any part thereof, or otherwise, as shall, under all the circumstances of the case, appear to such archbishop (after such inquiry made by himself or by his commissioner or commissioners, and in the latter case, after the substance of such inquiry shall have been returned in writing to the said archbishop) to be just and proper: provided always, that the party so appealing shall give security to the bishop for the payment of such reasonable expenses occasioned by the appeal as the archbishop or his commissioner or commissioners shall award: provided also, that no such order for any sequestration shall be put in force during such appeal as aforesaid, and until the same shall be determined.

31. Provided also, and be it further enacted, that every spiritual person to whom any such monition or order in writing shall be sent as aforesaid under this act, who shall be at the time of the issuing thereof absent from residence in or upon his benefice, his donative, perpetual curacy, or parochial chapelry, contrary to the provisions of this act, but who shall, in obedience to such monition or order, forthwith return to due residence, and the profits of whose benefice, donative, perpetual curacy, or parochial chapelry, shall, by reason of such return, not be sequestered, shall nevertheless pay all costs, charges, and expenses incurred by reason of the issuing and serving such monition or order; to be levied as any costs may be levied on any spiritual person by any archbishop or bishop, under any of the provisions of this act.

32. And to the intent effectually to enforce *bond fide* residence, according to the intent and meaning of such monitions and orders as aforesaid, be it further enacted, that if any spiritual person not licensed under this act to be absent from his benefice, donative, perpetual curacy, or parochial chapelry, nor having other lawful cause of absence from the same, who, after any such monition or order as aforesaid, requiring his residence, and before or after any such sequestration as aforesaid, shall, in obedience to such monition or order, have begun to reside upon his benefice, donative, perpetual curacy, or parochial chapelry, shall afterwards and before the expiration of six months next after the commencement of such residence, in the judgment and without the leave of such archbishop or bishop, begin wilfully to absent himself from such benefice, donative, perpetual curacy, or parochial chapelry, it shall be lawful for such archbishop or bishop, without issuing any other monition, or making any other order, again to sequester and apply the profits of such benefice, donative, perpetual curacy, or parochial chapelry, as is before directed by this act for the purpose of enforcing the residence of such spiritual person, according to the true intent of the original monition issued by such archbishop or bishop as aforesaid; and it shall be lawful for the archbishop or bishop so to proceed in like cases from time to time, as often as occasion may require: provided, that, in each and every of such cases, such spiritual person shall be entitled to appeal against such sequestration, in such manner and upon such terms as hereinbefore is and are mentioned, touching appeals respecting sequestrations; but nevertheless the same shall be in force during such appeal.

33. And be it further enacted, that if any clerk shall continue under any sequestration made under the provisions of this act for non-residence for the space of three years, or shall, under the provisions of this act, incur three sequestrations in the said space of three years, not being relieved, with respect to any of such sequestrations, upon appeal, the benefice, donative, perpetual curacy, or parochial chapelry, in relation to non-residence upon which such sequestration shall have been made, shall become *ipso facto* void, and the patron or

1803.

or person entitled to present or nominate some clerk thereto, other than the clerk who shall have so continued under such sequestration or sequestrations, as if the same had been avoided by the natural death or resignation of the party.

34. And be it further enacted, that all contracts or agreements made after the passing of this act, for the letting of houses of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupations of the same, belonging to any benefice, donative, perpetual curacy, or parochial chapelry, to which houses of residence any spiritual person shall be required, by order of the archbishop or bishop as aforesaid, to proceed and to reside therein, a copy of which order shall, immediately on the issuing thereof, be transmitted to one of the churchwardens of the parish, and be by him forthwith served on the occupier of such house of residence, or left at the same, and which such churchwarden is hereby required to serve accordingly, shall be null and void; and any person continuing to hold any such house of residence, or any such building, garden, orchard or premises, after the day on which the said spiritual person shall be directed by the said order to reside in such house of residence, and after service of such copy as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the archbishop or bishop in writing for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard, or premises, to be recovered and applied in like manner as the penalties for non-residence are directed to be recovered and applied by the provisions of this act; but in cases of such contracts or agreements made before the passing of this act, the person holding and occupying under any such contract or agreement shall not be liable to any penalty for three calendar months from the time of service of the copy of such order of the archbishop or bishop as aforesaid upon such occupier, or at such house of residence as aforesaid, and sequestration shall not issue for disobedience to the order of the archbishop or bishop for three calendar months, to be computed from the service of the copy of the said order, at the expiration of which time it shall be lawful for the archbishop or bishop to issue sequestration; and from and after the expiration of which time the party continuing to hold any such house, building, garden, orchard, premises, or appurtenances as aforesaid, shall forfeit the sum of forty shillings for every day he shall wilfully continue without such permission in writing as aforesaid to hold the same, or any of them, to be recovered and applied in like manner as aforesaid.

35. Provided always, and be it further enacted, that no spiritual person shall be liable to any penalties under this or any former act, for not residing in such house of residence during such time as such tenant shall continue to occupy such house of residence, and other buildings necessary to the occupation of the same.

36. Provided always, and be it further enacted, that where any action, suit, plaint, or information shall have been commenced or brought against any spiritual person to whom any monition shall be sent as aforesaid, before the issuing thereof, for any penalty or forfeiture incurred by reason of the non-residence of any such spiritual person before the issuing of such monition, then and in such case the bishop or archbishop sending such monition as aforesaid, shall upon notice of such action or suit, cause to be retained the profits, or so much of the profits of the benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof such action or suit shall be brought, and monition issued as aforesaid, and which may under this act be sequestered as aforesaid, as will be sufficient to satisfy any penalty or penalties for which any such action or suit be brought, together with such costs as the plaintiff or plaintiffs therein may be entitled to, if any, and shall, if a verdict shall be given for the plaintiff or plaintiffs in such action, and final judgment obtained therein, after deducting all the charges which shall have been occasioned by the said sequestration, to the bishop or archbishop, or any person or persons who shall have acted therein under his authority, pay or cause to be paid to such plaintiff or plaintiffs the sum or sums of money that shall be recovered in any such action or suit, to the plaintiff or plaintiffs therein: provided always, that if at the time of filing

Contracts, after passing this act, for letting houses in which any spiritual persons shall, by order of the bishop, be required to reside, shall be void; and persons holding possession after the day appointed shall be subject to penalty; but in cases of contracts before passing this act, not till three months after service of such order on the occupier, &c.

No penalty for non-residence, while the tenant shall continue to occupy.

If an action be brought for non-residence before issuing monition, a sum sufficient to satisfy penalty and costs shall be retained out of the profits of the benefice.

If at the time of any

1803.

filing any monition no action shall have been commenced, none shall be afterwards brought, &c.

any such monition as aforesaid, no action for any such penalty or forfeiture shall have been already commenced against such spiritual person, then and in such case no such action, suit, bill, plaint, or information shall be afterwards brought for any penalty or forfeiture incurred by reason of any non-residence of such spiritual person before the issuing of such monition, or during any proceedings that may be had under such monition; and if any such action or suit shall be so commenced, the defendant therein may plead, in bar thereof, that such a monition as aforesaid has issued in respect of the same parsonage, vicarage, donative, perpetual curacy, or parochial chapelry; and such defendant, unless, upon application to the court, the same shall be dispensed with, shall, upon pleading such matter, file or cause to be filed an affidavit in the said court, thereby stating, that, according to the behalf of the defendant, the bishop, or archbishop who has issued or caused such monition to be issued, is proceeding or intends to proceed upon the said monition, to the intent to make the same effectual to the intents and purposes of this act, otherwise such plea shall not be good or available in the law.

No oath relating to residence shall be required of any vicar.

37. And be it further enacted, that from and after the passing of this act, no oath shall be required of or taken by any vicar, in relation to residence on his vicarage; any law, custom, constitution, or usage to the contrary thereof notwithstanding.

Act extended to all dignities, prebends, benefices, &c.

38. And be it further enacted, that from and after the passing of this act, all and every the clauses, provisions, penalties, and forfeitures in this act contained in relation to residence, or to any other matters and things relating thereto, shall extend and be deemed and construed to extend to all dignities, prebends, benefices, donatives, perpetual curacies, and all parochial chapelries, exempt as well as not exempt, and all peculiars, as fully and amply to all intents and purposes as if the same had been and were in this act particularly mentioned and specified; any thing in any act or acts, law or laws, to the contrary thereof notwithstanding.

Archbishops, bishops, and archdeacons, within their respective provinces, &c. shall for the purposes of this act have the same powers over exempt benefices as if the same were not exempt; and where situate in more than one province, &c. or between the limits of two, the archbishop or bishop to whose cathedral the parish church shall be nearest, shall have the like powers, &c. All peculiars shall be subject to the archbishop or bishop to whom they belong.

39. And be it further enacted, that every archbishop, bishop, and archdeacon, within the limits of whose province, diocese, or jurisdiction respectively, any dignity, benefice, donative, perpetual curacy, or parochial chapelry respectively, exempt or peculiar, shall be locally situate, shall have, use, and exercise, all the powers and authorities necessary for the due execution by them respectively, of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop, bishop, and archdeacon respectively would have used and exercised, if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop, bishop, or archdeacon; and also that where any benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar, shall be locally situate within the limits of more than one province, diocese, or jurisdiction, or where the same, or any of them, shall be locally situate between the limits of any two or more of such provinces, dioceses, or jurisdictions, or any of them, the archbishop or bishop, to the cathedral church of whose province or diocese, the parish church of the same respectively shall be nearest in local situation, shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used, if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively; and the same, for all the purposes of this act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; and the same shall also, for the purposes of this act, be taken to be within the archdeaconry of, and be subject to the jurisdiction of such archdeacon as hath jurisdiction as such over the parish, the parish church of which is nearest to the church of such benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar; any thing in any act or acts, law or laws, usage or usages, or other matter or thing to the contrary notwithstanding: provided, that the peculiars belonging to any archbishopric or bishopric, though locally situated in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes

poses of this act, as for all other purposes of ecclesiastical jurisdiction in the laws whatsoever.

40. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to alter or affect his Majesty's royal prerogative in the granting of dispensations for non-residence upon benefices, as the same now exists by law; nor to affect any privileges of clerks retained in his Majesty's service under the statute passed in the ninth year of Edward the Second, intituled, "Clerks in the King's service shall be discharged of their Residence, but shall be corrected by their Ordinary."

41. And to the intent to avoid all doubts, be it enacted, That no archbishop or bishop having, or who shall have, any dignity, prebend, benefice, donative, or perpetual cure, shall, by reason of non-residence upon the same, be subject or liable to any penalties or forfeitures.

42. Provided also, and be it further enacted, That no forfeiture or penalty shall be incurred under or by virtue of this statute for any act of non-residence committed prior to the first day of January one thousand eight hundred and four.

43. Provided also, That no penalty for farming shall be incurred by any spiritual person, under this or any other statute, till the fifth day of April one thousand eight hundred and four.

44. Provided also, That no provision in this act contained shall extend or be construed to extend beyond that part of the united kingdom of Great Britain and Ireland called England.

45. Provided also, and be it further enacted, That in case in any action, bill, plaint, or information, in which any verdict shall have been obtained prior to the passing of this act, any execution shall have been sued out at any time between the seventh day of July one thousand eight hundred and three, and the day after the passing of this act, it shall be lawful, after the passing of this act, for any judge of the court in which such action, bill, plaint, or information shall be depending, upon the application of the defendant, to direct, by any rule or order, the plaintiff or plaintiffs who shall have levied under any such execution, to repay to the defendant so much of the penalties, forfeitures, and costs levied by such execution, as the sums so levied shall exceed the amount of what such defendant would have been liable to pay in penalty, forfeiture, and costs, or any of them, as the case might be, if no execution had been sued out against such defendant, and such defendant had applied under this act to such judge to discontinue the proceedings in such action, bill, plaint and information before execution taken out; and such judge and defendant respectively shall have full power to enforce obedience to such order or rule, in like manner as obedience to any order or rule of such court, or any judge of court, can or may be enforced.

1803.

Act shall not affect his Majesty's prerogative in granting dispensations, nor clerks retained in his service under 9 Edw. 2. c. 8. No archbishop or bishop shall be liable to penalties for non-residence. No penalty for non-residence prior to Jan. 1, 1804; nor for farming till April 5, 1804.

Act not to extend beyond England.

If any execution shall have been sued out between July 7, 1803, and the day after passing this act, the judge may direct the repayment of so much of penalties and costs levied as exceeds what the defendant would have been liable to under this act.

43 Geo. 3. c. 107.

An Act for effectuating certain Parts of an Act, passed in the Second and Third Years of the Reign of her late Majesty Queen Anne, intituled, "An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First-Fruits and Tenths, and also for enabling any other Persons to make Grants for the same Purpose," so far as the same relate to Deeds and Wills made for granting and bequeathing Lands, Tenements, Hereditaments, Goods, and Chattels, to the Governors of the Bounty of Queen Anne, for the Purposes in the said Act mentioned, and for enlarging the Powers of the said Governors.—27th July, 1803.

WHEREAS, by an act made in the second and third years of the reign of her late Majesty Queen Anne, intituled, "An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First-Fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose;" after reciting,

2 & 3 Anne, c. 11.s.4. by which persons were empowered to grant estates, &c. in their own right to the go-

amongst

1803.

governors of the bounty of Queen Anne, to wards the augmentation of the maintenance of the clergy, shall remain in force notwithstanding mortmain act, 9 G. 2. c. 36.

‘ amongst other things, that for the encouragement of such well-disposed persons as should, by her Majesty’s royal example, be moved to contribute to so pious and charitable a purpose, and that such their charity might be rightly applied, it was amongst other things enacted, that all and every person and persons having in his or their own right any estate or interest, in possession, reversion, or contingency, of or in any lands, tenements, or hereditaments, or any property of or in any goods or chattels, should have full power, license, and authority, at his, her, and their will and pleasure, by deed enrolled in such manner and within such time as is directed by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, for enrolment of bargains and sales, or by his, her, or their last will or testament in writing, duly executed according to law, to give and grant to and vest in the corporation thereby authorised, and since erected under the name of “The Governors of the Bounty of Queen Anne,” and their successors, all such his, her, or their estate, interest, or property in such lands, tenements, and hereditaments, goods and chattels, or any part or parts thereof, for and towards the augmentation of the maintenance of such ministers officiating in such church or chapel where the liturgy and rites of the said church were or should be so used or observed, as in the same act were mentioned, and having no settled competent provision belonging to the same, and to be for that purpose applied according to the will of the said benefactor, in and by such deed enrolled, or by such will or testament executed as aforesaid expressed, and in default of such direction, limitation, or appointment, in such manner as by her Majesty’s letters-patent should be directed or appointed as aforesaid; and such corporation and their successors should have full capacity and ability to purchase, receive, take, hold, and enjoy for the purposes aforesaid, from such persons as should be so charitably disposed to give same, any manors, lands, tenements, goods, or chattels without any license or writ of *Ad quod damnum*, the statute of mortmain or any other statute or law to the contrary notwithstanding: And it was by the same act provided, that that act, or any thing therein contained, shall not extend to enable any person or persons, being within age, or of non-sane memory, or women covert without their husbands, to make any such gift, grant, or alienation, any thing in that act contained to the contrary in any wise notwithstanding: And whereas the beneficial effect and operation of the said act have been considerably obstructed and retarded by an act passed in the ninth year of the reign of his late Majesty King George the Second, intituled, “An Act to restrain the Disposition of Lands, whereby the same become unalienable”; for remedy thereof be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of the said act of her late Majesty Queen Anne, as is herein recited, shall be and remain in full force and effect, the said act of his late Majesty King George the Second, or any other act or law to the contrary notwithstanding.

Power of exchanging lands, &c. under 1 G. 1. c. 10. s. 13. extended to all the lands, &c. of augmented livings.

2. ‘ And whereas by an act passed in the first year of the reign of his late Majesty King George the First, intituled, “An Act for making more effectual her late Majesty’s gracious Intentions for augmenting the Maintenance of the Poor Clergy,” it was amongst other things enacted, that it should be lawful, with the concurrence of the said governors of the bounty of Queen Anne, and the incumbent, patron, and ordinary of any augmented living or cure, to exchange all or any part of the estate settled for the augmentation thereof, for any other estate in lands or tithes of equal or greater value, to be conveyed to the same uses;” be it also enacted, That the same power shall be, and the same is hereby extended to all the messuages, buildings, and lands belonging to every such augmented living or cure.

Where there is no suitable parsonage-house, the governors may provide one.

3. And be it further enacted, That where a living shall have been or shall be augmented by the said governors, either by way of lot or benefaction, and there is no parsonage-house suitable for the residence of the minister, it shall and may be lawful for the said governors, and they are hereby empowered, from time to time, in order to promote the residence of the clergy on their benefices, to

1803.

to apply and dispose of the money appropriated for such augmentation, and remaining in their hands, or any part thereof, in such manner as they shall deem most advisable, in or towards the building, rebuilding, or purchasing a house, and other proper erections within the parish, convenient and suitable for the residence of the minister thereof, which house shall for ever thereafter be deemed the parsonage-house appertaining to such living, to all intents and purposes whatsoever; any thing in any act or acts, or the rules of the said governors contained to the contrary notwithstanding.

43 Geo. 3. c. 108.

An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes.—[27th July, 1803.]

‘ **W**HEREAS a sufficient number of churches and chapels for the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, and of mansion-houses with competent glebes for the residence of ministers officiating in such churches and chapels, is necessary towards the promotion of religion and morality: And whereas the same are either wholly wanting or materially deficient in many parts of England and Ireland: And whereas many well-disposed persons would be desirous of contributing towards the supply of such defects, if they were enabled so to do in the manner hereinafter directed:’ May it therefore please your Majesty, that it may be enacted, and be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands or tenements, or of any property of or in any goods or chattels, shall have full power, license, and authority, at his and their will and pleasure, by deed inrolled in such manner, and within such time, as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for inrolment of bargains and sales, or by his, her, or their last will or testament in writing, duly executed according to law, such deed, or such will or testament being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politic or corporate, and their heirs and successors respectively, all such his, her or their estate, interest or property in such lands or tenements, not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding the value of five hundred pounds, for and towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the liturgy and rites of the said united church are or shall be used or observed, or any mansion-house for the residence of any minister of the said united church, officiating or to officiate in any such church or chapel, or of any out-building, offices, churchyard or glebe for the same respectively, and to be for those purposes applied, according to the will of the said benefactor, in and by such deed inrolled, or by such will or testament executed as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and in default of such direction, limitation, or appointment, in such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability to purchase, receive, take, hold, and enjoy for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or aliene to such person or persons, bodies politic or corporate, any lands or tenements, goods or chattels, without any license or writ of *Ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that this act or any thing therein contained, shall not extend to enable any person or persons being within age, or of non-sane

Persons possessed in their own right may, by deed enrolled (in England under stat. 27 H. 8. c. 16. and in Ireland under stat. 10 C. st. 2. c. 1. s. 17.), or by will executed 3 months before their decease, give lands not exceeding five acres, or goods and chattels not exceeding 500l. for the purposes of this act.

Not to extend to infants, females covert, &c.

1803.

Only one such gift shall be made by one person, and where it exceeds amount, the chancellor may reduce it.

No glebe upwards of fifty acres shall be augmented with more than one acre.

Plots of land not exceeding one acre, held in mortmain, may be granted either by exchange or benefaction for sites of churches, &c.

Accommodation shall be provided for all persons resorting to churches, &c.

Former rights of devising, &c. reserved.

sane memory, nor women covert without their husbands, to make any such gift, grant, or alienation; any thing in this act contained to the contrary in any wise notwithstanding.

2. Provided also, and it is hereby further enacted, That no more than one such gift or devise shall be made by any one person, and that if any such gift or devise as aforesaid shall happen to exceed five acres in lands or tenements, or the value of five hundred pounds in goods and chattels, every such gift or devise shall be good and valid to the extent aforesaid; and it shall be lawful for the lord chancellor for the time being, on petition, to make order for reducing every such gift or devise to and within the said limits, and for allotting such specific five acres, and if occasion shall require, such specific goods and chattels as in his judgment shall be most convenient, and to make such further order touching the premises as to him shall appear just and reasonable.

3. Provided also, That no glebe containing upwards of fifty acres shall be augmented with more than one acre under or by virtue of this act, but that the excess, if any, given or devised for the purpose of such augmentation, shall be reduced in manner aforesaid, by the said lord chancellor, and such order thereupon shall be by him made as hereinbefore is directed in the case of an excess beyond five acres.

4. 'And whereas it often happens that small plots of land held in mortmain lie convenient to be annexed to some such church or chapel, or house of residence, as aforesaid, or to some churchyard, or curtilage thereto belonging, or convenient to be employed as the site of some such church or chapel, or house, to be hereafter erected, and for the necessary and commodious use and enjoyment thereof, and that they might be so employed to the advantage of the public, and without detriment to the proprietors thereof, if they were enabled to give and grant the same for the purposes aforesaid: be it therefore further enacted, That it shall be lawful for every body politic or corporate, sole or aggregate, by deed inrolled as aforesaid, with or without confirmation, as the law may require, to give and grant, either by way of exchange or benefaction, any such small plot of land not exceeding one acre, to any person or persons, body politic or corporate, his and their heirs and successors respectively, to be held, used, and applied for the purposes aforesaid; and such last-mentioned person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability, with consent of the incumbent, patron, and ordinary, to take, hold, and enjoy such small plot of land for the purposes aforesaid, without any license or writ of *Ad quod damnum*, the statute of mortmain, or any other act or law to the contrary notwithstanding.

5. Provided also, and it is hereby further enacted and declared, That in every parochial church or chapel hereafter to be erected, ample provision shall be made for the decent and suitable accommodation of all persons, of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodation.

6. Provided also, That nothing in this act contained shall be construed to take away or abridge any right of giving or devising which already exists in any person whatsoever.

43 Geo. 3. c. 109.

An Act to rectify a Mistake in an Act made in this present Session of Parliament intituled, "An Act to amend the Laws relating to Spiritual Persons holding Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in England;" and to remove a Doubt respecting the Title of the Statute of the Twenty-First Year of King Henry the Eighth therein mentioned.—[27th July, 1803.]

'WHEREAS by an act made in this present session of parliament, intituled "An Act to amend the Laws relating to Spiritual Persons holding Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in England;" and reciting as therein is recited, it was amongst other things enacted in the words following, that is to say, "And it shall also be lawful for any spiritual person having or holding any donative, perpetual curacy, or parochial chapelry, not having any sufficient or convenient glebe or de-

1803.

' demesne lands annexed to, or in right of, or by reason of his benefice or
 ' cure or chapelry, or for any stipendiary curate, or any unbeneficed spiritual
 ' person, with the consent or approbation of the bishop of the diocese, signified
 ' in writing, to take to ferm to himself, or to any person or persons to his use
 ' for a limited term of years, any farm or farms, lands, tenements, or heredita-
 ' ments, that may, under all the circumstances, appear to such bishop, proper
 ' to be taken, held, or occupied by any such spiritual person, for the conveni-
 ' ence of his household and hospitality only, without being subject or liable to
 ' any pains, penalties, or forfeitures, under the said first-recited act or any
 ' other act, by reason thereof, any thing therein contained to the contrary not-
 ' withstanding;" And whereas after the words "any spiritual person having or
 ' holding any," and before the word "donative" in the said provision, the
 ' word "benefice" was by mistake omitted to be there inserted:" For rectify-
 ing the said mistake, may it therefore please your Majesty, that it may be
 enacted, and be it enacted by the King's most excellent Majesty, by and with
 the advice and consent of the Lords spiritual and temporal, and Commons, in
 this present parliament assembled, and by the authority of the same, That,
 from the day on which the said act passed, the said provision, and every matter
 therein contained, shall extend, and be construed to extend, to every spiritual
 person having or holding any benefice in like manner as if the word "benefice"
 had been inserted after the word "any" and before the word "donative" in
 the said provision in the said act.

Provision of re-
 cited act, where
 the word "be-
 nefice" was by
 mistake omit-
 ted, extended to
 spiritual persons
 having any be-
 nefice.

2. And be it further enacted, that every clause, matter, and provision con-
 tained in the said act, which has or in construction thereof can or ought to
 have relation to the said provision, shall be construed in such and the like man-
 ner, and shall be and be taken to be of the same effect as if the word "benefice"
 had been inserted as aforesaid in the said provision.

Clauses in said
 act shall have
 effect as if "be-
 nefice" had
 been inserted.

3. Be it also enacted, That the said act passed in the twenty-first year of the
 reign of King Henry the Eighth, whereby it is among other things enacted in
 the words or to the effect following; ' That as well every spiritual person now
 ' being promoted to any archdeaconry, deanry, or dignity, in any monastery or
 ' cathedral church or other church, conventual or collegiate, or being beneficed
 ' with any parsonage or vicarage, as all and every spiritual person and persons
 ' which hereafter shall be promoted to any of the said dignities or benefices with
 ' any parsonage or vicarage, from the feast of Saint Michael the archangel next
 ' coming, shall be personally resident and abiding in, at, and upon his said dig-
 ' nity, prebend or benefice, or at one of them at the least; and in case that any such
 ' spiritual person at any time after the said feast keep not residence at one of his said
 ' dignities, prebends, or benefices as is aforesaid, but absent himself wilfully by
 ' the space of one month together, or by the space of two months, to be account-
 ' ed at several times in any one year, and make his residence and abiding in any
 ' other places by such time, that then he shall forfeit for every such default, ten
 ' pounds sterling, the one half thereof to the King our sovereign lord, and the
 ' other half of the same to the party that will sue for the same in any of the
 ' King's courts by original writ of debt, bill, plaint, or information, in which
 ' action and suit the defendant shall not wage his law, nor have any essoin or
 ' protection allowed,' shall, from the day on which the said recited act of this
 present session of parliament passed, be deemed and taken to all intents and
 purposes in the construction of the said act of the present session, to be the act
 of the twenty-first year of the reign of King Henry the Eighth, intended to be
 recited in the said act of the present session of parliament, and which is in such
 act of the present session mentioned to be intituled, "Spiritual Persons
 abridged from having Pluralities of Livings and from taking of Farms, &c." not-
 withstanding any mistake which there may be in the said act of the present
 session of parliament, in setting forth the title of the said act of the twenty-
 first year of the reign of King Henry the Eighth, wherein and whereby it is
 enacted as aforesaid.

Doubt respect-
 ing the title of
 21 H. 8. c. 13.
 (as recited in c.
 84. of this ses-
 sion) removed.

1805.

45 Geo. 3. c. 84.

An Act for making more effectual the gracious Intentions of her late Majesty Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy, so far as relates to the Returns of Certificates into the Exchequer, and Gifts of Personal Property.—[2d July, 1805.]

1 G. 1. c. 10. s.
1, 2.

5 Anne, c. 24.

6 Anne, c. 27.

Bishops, &c.
shall inquire in-
to value of be-
nefices returned
into the exche-
quer, and certi-
fy the same to
the governors of
Queen Anne's
bounty, who
shall be em-
powered to act
upon such new
certificate as
they are now
enabled to do

‘ WHEREAS by an act passed in the first year of the reign of his late Ma-
‘ jesty King George the First, intituled, “An Act for making more
‘ effectual her late Majesty’s gracious Intentions for augmenting the Main-
‘ tenance of the Poor Clergy,” the respective bishops of every diocese were em-
‘ powered from time to time, as they should see occasion, and as might best
‘ serve the purposes of the said bounty to the poor clergy, to inform them-
‘ selves by such means as in the said act are mentioned, of the clear improved
‘ yearly value of every benefice with cure of souls, living, and curacy, and of
‘ the true and clear improved yearly value of the maintenance of every parson,
‘ vicar, curate, and minister officiating in any such churches or chapels as are
‘ therein mentioned, and how such yearly values arose, with the other circum-
‘ stances thereof, and the same to certify to the said governors, for their better
‘ information in the premises; in which said act is contained a proviso, that
‘ where by certificates returned into her said Majesty’s court of Exchequer at
‘ Westminster, pursuant to an Act made in the fifth year of her reign, intituled,
‘ “An Act for discharging small Livings from their First-Fruits and Tenths,
‘ and all Arrears thereof;” and one other act made in the sixth year of her reign,
‘ intituled, “An Act to enlarge the Time for returning the Certificates of all
‘ Ecclesiastical Livings, not exceeding the yearly value of Fifty Pounds, and
‘ for other Purposes,” or either of them, or made good by the said recited act of
‘ the first year of King George the First, the yearly value of any livings not ex-
‘ ceeding the clear yearly value of fifty pounds, were particularly and duly ex-
‘ pressed and specified, such certificates should ascertain the yearly values of such
‘ livings, in order to their being augmented by the said governors, and no new
‘ or different valuation thereof should be returned to the said governors by
‘ virtue of the said recited act: And whereas since the time that such certifi-
‘ cates were returned into the exchequer, in pursuance of the said acts of the
‘ fifth and sixth of her said late Majesty Queen Anne, many livings in such
‘ certificates mentioned, and thereby returned as not exceeding the clear yearly
‘ value of fifty pounds, for the purpose of being discharged from first-fruits and
‘ tenths, are, by subsequent improvement of their glebe and tithes, and by in-
‘ closures and other means, become of much greater value; and in order that
‘ the bounty of her said late Majesty may be applied as was originally intended,
‘ for the augmentation of small livings, in places where the same are not
‘ already sufficiently provided for, and that her Majesty’s gracious intentions for
‘ the relief of the poor clergy may be more speedily and effectually carried into
‘ execution, it is become expedient that the governors of the said bounty should
‘ be empowered to receive new valuations of such livings as were so returned
‘ into the exchequer;’ May it therefore please your Majesty that it may be
enacted, and be it enacted by the King’s most excellent Majesty, by and with
the advice and consent of the Lords spiritual and temporal, and Commons, in
this present parliament assembled, and by the authority of the same, That the
respective bishops of every diocese, and the guardians of spiritualities *sede vacante*
shall be and are hereby empowered from time to time as they shall see occasion,
and as may best serve the purposes of the said bounty to the poor clergy, by
such ways and means as, in the said act of the first year of his Majesty King
George the First, are mentioned in that behalf, to inform themselves of the
clear improved yearly value of such benefices with cure of souls, livings, and
curacies as were returned into the exchequer in pursuance of the said acts of the
fifth and sixth years of the reign of her said late Majesty Queen Anne, within
their several dioceses, or within any peculiars or places of exempt jurisdiction,
within the bounds and limits of their respective dioceses, or adjoining or conti-
guous thereto, although the same be exempt from the jurisdiction of any bishop
in

in other cases, and how such yearly values arise, with the other circumstances thereof, and the same or such of them, whereof they shall have fully informed themselves, from time to time with all convenient speed to certify to the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, for their better information in the premises; and the said governors are hereby authorised and empowered, with respect to the augmentation of such livings, so formerly certified into the exchequer as aforesaid, to act upon and be guided by such new certificates of the value and other circumstances thereof, made in pursuance of this act, as fully and effectually to all intents and purposes as they are in and by the said first hereinbefore mentioned and in part recited act, enabled to do with regard to such livings as were not so certified into the exchequer, and as if the restraint of the said proviso therein had not been made, the same proviso or any thing in the said recited act to the contrary thereof in anywise notwithstanding.

1805.

with respect to livings not returned into the exchequer.

2. Provided always, and be it enacted, That such certificates as were returned into the exchequer for the purpose of ascertaining what livings were to be discharged from first-fruits and tenths, shall not, so far as the same relate to the first-fruits and tenths, be affected or altered in any manner whatsoever by any thing in this act contained.

Not to affect livings with respect to their discharge from first-fruits and tenths.

3. 'And in order to facilitate the intentions of all such persons as may be disposed to contribute to the augmentation of such livings and curacies as are within the meaning of the laws now in force, respecting the said bounty;' be it further enacted, That it shall be lawful for any person or persons having in his, her, or their own right, any money, goods, chattels, or other personal effects, at his, her, or their will and pleasure, to give or grant to, or vest in the said governors of the bounty of Queen Anne and their successors, to be by them disposed of according to law, all or any part of such money, goods, chattels, or other personal effects, without any deed or deeds, either enrolled or not enrolled, in like manner as he, she, or they could or might have done, either by deed or deeds enrolled or otherwise, before the passing of this act, any statute or law to the contrary in anywise notwithstanding.

Personal property may be given for augmenting livings without deed.

4. Provided nevertheless, That nothing herein contained shall in any manner alter or affect the law now in force respecting the gift or conveyance of any lands, tenements, or hereditaments, by any deed or deeds, or the disposition thereof; or of any goods, chattels, or other personal property, by will or testament.

Proviso as to gifts of lands and devises.

51 Geo. 3. c. 115.

1811.

An Act for amending the Act Forty-third George Third, to promote the building, repairing or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes.—[26th June, 1811.]

'WHEREAS by an act passed in the forty-third year of his present Majesty's reign, intituled, "An Act to promote the building, repairing or otherwise providing of Churches and Chapels, and of Houses for the residence of Ministers, and the providing of Churchyards and Glebes;" it was enacted, That every person and persons, having in his or their own right any estate or interest in, possession, reversion or contingency of or in any lands or tenements, or of any property of or in any goods or chattels, should have full power, license and authority, by deed enrolled, in such manner, and within such time as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for enrolment of bargains and sales; or by his, her, or their last will or testament in writing, duly executed according to law, such deed or such will or testament being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politic or corporate, and their heirs and successors respectively, all such his, her, or their

43 Geo. 3. c. 108. s. 1.

1811.

The King may grant lands for building or repairing churches or chapels or houses for residence of ministers.

9 H. 3. c. 36.
1 Anne, stat. 1.
c. 7.

No grant to exceed five acres.

Persons having fee-simple of manors may grant five acres of waste for ecclesiastical purposes.

‘ their estate, interest or property in such lands or tenements not exceeding
‘ five acres, or goods and chattels, or any part or parts thereof, not exceeding
‘ in value five hundred pounds, for or towards the erecting, rebuilding, re-
‘ pairing, purchasing or providing any church or chapel where the liturgy and
‘ rites of the said united church are or shall be used or observed, or any mansion
‘ house for the residence of any minister of the said united church, officiating
‘ or to officiate in any such church or chapel, or of any out-buildings, offices,
‘ churchyard or glebe for the same respectively, and to be for those purposes
‘ applied according to the will of the said benefactor in and by such deed en-
‘ rolled, or by such will or testament executed as aforesaid expressed (the con-
‘ sent and approbation of the ordinary being first obtained), and in default of
‘ such direction, limitation, or appointment, in such manner as shall be directed
‘ and appointed by the patron and ordinary, with the consent and approbation
‘ of the parson, vicar, or other incumbent ; and such person and persons, bodies
‘ politic and corporate, and their heirs and successors respectively, should have
‘ full capacity and ability to purchase, receive, take, hold, and enjoy for the
‘ purposes aforesaid, as well from such persons as shall be so charitably dis-
‘ posed to give the same, as from all other persons as shall be willing to sell or
‘ alien to such person or persons, bodies politic and corporate, any lands or te-
‘ nements, goods or chattels, without any license or writ of *Ad quod damnum* ;
‘ And whereas doubts have arisen whether the powers and provisions of the
‘ said act will enable his Majesty to make any such grant for the purposes be-
‘ fore mentioned : And whereas it is expedient that the powers of the said act
‘ should be extended for that purpose ;’ Be it therefore enacted by the King’s
most excellent Majesty, by and with the advice and consent of the Lords
spiritual and temporal, and Commons, in this present parliament assembled,
and by the authority of the same, That the King’s most excellent Majesty, his
heirs and successors, shall have full power, license, and authority, by deed or
writing under the great seal, or under the seal of his duchy and county palatine
of Lancaster, to give and grant and vest in any person or persons, bodies politic
or corporate, and their heirs and successors respectively, all such his or their
estate, interest or property in any lands or tenements within the survey of the
court of exchequer, or of the duchy of Lancaster, for or towards the erecting;
rebuilding, repairing, purchasing or providing any church or chapel where the
liturgy and rites of the said united church are or shall be used or observed, or
any mansion-house for the residence of any minister of the said united church
officiating or to officiate in any such church or chapel, or of any outbuildings,
offices, churchyard or glebe, for the same respectively, and to be for those pur-
poses applied in and by such deed as aforesaid expressed, the consent and appro-
bation of the ordinary being first obtained, and such person and persons, bodies
politic and corporate, and their heirs and successors respectively, shall have full
capacity and ability to receive, take, hold, and enjoy for the purposes aforesaid,
any lands or tenements, notwithstanding the statute of mortmain, or the act of
the first year of her late Majesty Queen Anne, intituled, “ An Act for the
better Support of her Majesty’s Household, and the Honour and Dignity of
the Crown,” or any other act or acts, or other impediment or disability whatso-
ever : Provided always, that nothing in this act contained shall extend or be
construed to extend to enable his Majesty, his heirs and successors, to grant
more than five acres in any one grant for any the purposes aforesaid, or to alter
or amend any of the provisions of the said act of the forty-third year of his pre-
sent Majesty, which are not hereinbefore specially named and mentioned.

2. And be it further enacted by the authority aforesaid, That it shall be lawful
for any person or persons, bodies politic or corporate, seised of or intituled to the
entire and absolute fee-simple of any manor, by deed under the hand or seal or
hands and seals of any such person or persons, and under the seal or seals of any
such body or bodies politic or corporate, and enrolled in the court of chancery, to
grant to the rector, vicar or other minister of any parish church and his suc-
cessors, or to the curate or minister of any chapel and his successors, any parcel
or parcels of land not exceeding in the whole the quantity of five statute acres,
parcel of the waste of such manor, and lying within the parish where such
church

church or chapel shall be or shall be intended to be erected, or within any extra-parochial district wherein any such chapel shall be or shall be intended to be erected, for the purpose of erecting thereon or enlarging any such church or chapel, or for a churchyard or burying ground, or enlarging a churchyard or burying ground for such parish or extra-parochial place, or for a glebe for the rector, vicar, curate or other minister of any such church or chapel, to erect a mansion-house or other buildings thereon, or make other conveniences for the residence of such rector, vicar, curate or other minister, freed and absolutely discharged of and from all rights of common thereon, and any statute prohibiting any alienation in mortmain, or other statute, law, or custom to the contrary notwithstanding: Provided always, that no grant whatsoever shall be made of any land whatsoever, for any of the purposes authorised by this act, unless the church or chapel for the benefit whereof or of the minister whereof such grant shall be made shall be a parochial church or chapel for the service of the united church of England and Ireland, duly authorised by law, or a church or chapel duly consecrated for the service of such church, or erected, or to be erected for such purpose by and with the license and consent of the ordinary of the diocese wherein the same shall be.

1811.

Grants restricted to parochial churches or chapels.

53 Geo. 3. c. 127.

1813.

An Act for the better Regulation of Ecclesiastical Courts in England; and for the more easy Recovery of Church Rates and Tithes.

WHEREAS it is expedient that excommunication, together with all proceedings following thereupon, should, saving in certain cases, be discontinued, and that other proceedings should be substituted in lieu thereof; and that certain other regulations should be made in the proceedings of the ecclesiastical courts; and that more convenient modes of recovering tithes and church rates in certain cases should be provided; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this act, excommunication, together with all proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued, throughout that part of the united kingdom of Great Britain and Ireland called England; and that in all causes which, according to the laws of this realm, are cognizable in the ecclesiastical courts, when any person or persons having been duly cited to appear in any ecclesiastical court, or required to comply with the lawful orders or decrees, as well final as interlocutory, of any such court, shall neglect or refuse to appear, or neglect or refuse to pay obedience to such lawful orders or decrees, or when any person or persons shall commit a contempt in the face of such court, no sentence of excommunication shall be given or pronounced; saving in the particular cases hereafter to be specified; but instead thereof, it shall be lawful for the judges or judge who issued out the citation, or whose lawful orders or decrees have not been obeyed, or before whom such contempt in the face of the court shall have been committed, to pronounce such person or persons contumacious and in contempt, and within ten days to signify the same in the form to this act annexed, to his Majesty in chancery, as hath heretofore been done in signifying excommunications; and thereupon a writ *de contumace capiendo*, in the form to this act annexed, shall issue from the court of chancery, directed to the same persons to whom the writs *de excommunicato capiendo* have heretofore been directed; and the same shall be returnable in like manner as the writ *de excommunicato capiendo* hath been by law returnable heretofore, and shall have the same force and effect as the said writ; and all rules and regulations not hereby altered, now by law applying to the said writ and the proceedings following thereupon, and particularly the several provisions contained in a certain act passed in the fifth year of Queen Elizabeth, intituled "An Act for the due Execution of the Writ *de excommunicato capiendo*", shall extend and be applied

Excommunication discontinued, except in certain cases.

A writ de contumace de capiendo shall issue and be returnable in the same manner as the writ de excommunicato capiendo.

5 El. c. 23.

1813.

to the said writ *de contumace capiendo* and the proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper officers of the said court of chancery are hereby authorised and required to issue such writ *de contumace capiendo* accordingly; and all sheriffs, gaolers, and other officers are hereby authorised and required to execute the same, by taking and detaining the body of the person against whom the said writ shall be directed to be executed; and upon the due appearance of the party so cited and not having appeared as aforesaid, or the obedience of the party so cited and not having obeyed as aforesaid, or the due submission of the party so having committed a contempt in the face of the court, the judges or judge of such ecclesiastical court shall pronounce such party absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler or other officer in whose custody he shall be, in the form to this act annexed, for discharging such party out of custody, and such sheriff, gaoler or other officer shall, on the said order being shewn to him, so soon as such party shall have discharged the costs lawfully incurred, by reason of such custody and contempt, forthwith discharge him.

In what cases excommunication shall continue.

2. Provided always, and be it further enacted, that nothing in this act contained shall prevent any ecclesiastical court from pronouncing or declaring persons to be excommunicate in definitive sentences, or in interlocutory decrees having the force and effect of definitive sentences, such sentences or decrees being pronounced as scriptural censures for offences of ecclesiastical cognizance, in the same manner as such court might lawfully have pronounced or declared the same, had this act not been passed.

Proceedings in case of excommunication.

3. And be it further enacted, that no person who shall be so pronounced or declared excommunicate, shall incur any civil penalty or incapacity whatever, in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate shall direct, and in such case the said excommunication, and the term of such imprisonment, shall be signified or certified to his Majesty in chancery, in the same manner as excommunications have been heretofore signified, and thereupon the writ *de excommunicato capiendo* shall issue, and the usual proceedings shall be had, and the party being taken into custody shall remain therein for the term so directed, or until he shall be absolved by such ecclesiastical court.

7 & 8 W. 3. c. 6.
§ 1.

4. And whereas in the seventh and eighth years of King William the Third an act was made and passed, intituled "An Act for the more easy Recovery of Small Tithes," whereby, amongst other things therein enacted, two or more of his Majesty's justices of the peace are authorised and required to hear and determine complaints touching tithes, oblations and compositions subtracted or withheld, not exceeding forty shillings: and whereas it has become expedient to enlarge such amount, and also to extend the said act to all tithes whatsoever of certain limited amount; be it enacted, that such justices of the peace shall, from and after the passing this act, be authorised and required to hear and determine all complaints touching tithes, oblations and compositions subtracted or withheld, where the same shall not exceed ten pounds in amount from any one person, in all such cases, and by all such means, and subject to all such provisions and remedies, by appeal or otherwise, as contained in the said act of King William, touching small tithes, oblations and compositions not exceeding forty shillings: Provided always nevertheless, that, from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

Justices of peace may determine complaints respecting tithes not exceeding ten pounds.

Limitation of actions and suits respecting tithes.

5. And be it further enacted, that from and after the passing of this act, no action shall be brought for the recovery of any penalty for the not setting out tithes, nor any suit instituted in any court of equity, or in any ecclesiastical court, to recover the value of any tithes, unless such action shall be brought or such suit commenced within six years from the time when such tithes became due.

7 & 8 W. 3.
c. 34. § 4.

6. And whereas in the seventh and eighth years of King William the Third

1813.



‘ Third an act was made and passed, intituled “ An Act that the solemn Affirmation and Declaration of the People called Quakers shall be accepted instead of an Oath in the usual Form,” whereby, among other things, it is therein enacted, where any Quaker shall refuse to pay for or compound for his great or small tithes, or to pay any church rates, two or more of his Majesty’s justices of the peace are authorised to hear and determine the same, not exceeding the value of ten pounds: and whereas by a statute made and passed in the first year of King George the First the said act is extended to other objects: and whereas it is become expedient to enlarge the said sum; be it enacted, that from and after the passing of this act, all the provisions of the said acts of King William and King George shall be deemed and taken to extend to any value not exceeding fifty pounds: Provided always nevertheless, that, from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

and 1 G. 1.
stat. 2. c. 6. § 2.
as to Quakers
neglecting to
pay tithes, &c.
extended.

‘ 7. And whereas it is expedient that church rates or chapel rates of limited amount, unduly refused or withheld, should in certain cases be more easily and speedily recovered: be it enacted, that, from and after the passing of this act, if any one duly rated to a church rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace any person so refusing or neglecting to pay such rate, and to examine upon oath (which oath the said justices are hereby empowered to administer) into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed ten pounds, over and above the reasonable costs and charges, to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order, it shall and may be lawful for any one of such justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being thereout first deducted and allowed by the said justices; and any person finding him or herself aggrieved by any judgment given by two or more such justices, may appeal to the next general quarter-sessions to be held for the county, riding, city, liberty or town corporate wherein the church or chapel is situated, in respect whereof such rate shall have been made, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: Provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined: Provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of ten pounds from the party proceeded against: Provided likewise, that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the

Recovery of
church or
chapel rates.

Appeal.

Proviso for
ecclesiastical
jurisdiction.

Justices shall
not give judgment
when the
validity of the
rate is disputed.

1813.

Proviso.

Proctors allowing their names to be used by persons not entitled to act as proctors struck off roll.

Exception.

Persons exercising functions of a proctor not being duly enrolled.

Penalty.

Proviso for salaries of clerks of seven years standing.

Recovery of penalties, &c.

Limitation of actions.

General issue.

recovery of their demand, according to the due course of law, as heretofore used and accustomed: Provided likewise, that nothing herein contained shall affect any regulations that may have been made by authority of parliament, respecting the church rates or chapel rates of any particular parishes or districts.

8. And be it further enacted, that, from and after the passing of this act, if any proctor of the Arches court of Canterbury, or any other ecclesiastical court or courts in which he shall be entitled to act as proctor, shall act as such, or permit or suffer his name to be in any manner used in any suit, the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probates of wills, letters of administration or marriage licenses, to or for, or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be made to the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid, then and in such case every such proctor so offending shall be struck off the roll of proctors, and be for ever after disabled from practising as a proctor, or be suspended from the office, function and practice of a proctor in all and every the said court or courts for so long a period as the judge or judges of the said court or courts may deem fit; save and except as to any allowance or allowances, sum or sums of money that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors by any surviving partner or partners of such deceased proctor or proctors; and also save and except as to any agreement made, or understood to have been made, between proctors and articulated clerks, whose articles have been executed prior to the passing of this act.

9. And be it further enacted, that, from and after the passing of this act, in case any person or persons shall in his or in their own name, or in the name of any other person or persons, make, do, act, exercise or perform any act, matter or thing whatsoever in any way appertaining or belonging to the office, function or practice of a proctor, for or in consideration of any gain, fee, or reward, or with a view to participate in the benefit to be derived from the office, functions or practice of a proctor, without being admitted and enrolled, every such person, for every such offence, shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned.

10. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to extend to any salary which shall be agreed to be paid by a proctor, his partner or successor, to a clerk really and *bond fide* serving in his office at the time of the passing of this act, and who shall have been *bond fide* serving in the office of any proctor or proctors for seven years next before the passing of the same.

11. And be it further enacted, that all pecuniary forfeitures and penalties imposed on any person or persons for offences committed against this act, shall and may be sued for and recovered in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, protection, privilege, wager of law or more than one imparlance shall be allowed, and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall receive the same for his or her own use, with full costs of suit.

12. And be it further enacted, that if any action or suit shall be brought or commenced for any thing done in pursuance of this act, every such action or suit shall be commenced within three calendar months next after the fact committed, and not afterwards, and shall be laid and tried in the city or county wherein the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time limited for bringing the same, or shall be laid in any other city, county or place than as aforesaid, then the judge shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs.

plaintiffs shall be nonsuited, or suffer a discontinuance of their action or suit, after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in any other case by law.

1813.

Treble costs.

Schedules to which this Act refers.

Schedule (A.)

To his most excellent Majesty and our sovereign lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland King, defender of the faith,

by divine Providence, &c.

Significavit of party being contumacious and in contempt.

health in Him by whom kings and princes rule and govern : We hereby notify and signify unto your Majesty, that one of

in the county of hath been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical, in not (as the case may be) appearing before (here set out the style of the ecclesiastical judge, or his representative), or in not obeying the lawful commands (here set out the commands) of (such judge or representative) or in having committed a contempt in the face of the court of (such judge or representative) lawfully authorised by (here set out the nature and manner of such contempt), on a day and hour now long past, in a certain cause of (here set out the nature of the cause, and the names of the parties to the same). We therefore humbly implore and entreat your said most excellent Majesty would vouchsafe to command the body of the said to be taken and imprisoned for such contumacy and contempt. Given under the seal of our court the day of

A. B. registrar, (or, deputy-registrar, as the case may be).

Schedule (B.)

George, &c. to the sheriff of hath signified to us, that

greeting : The of

in your

Writ de Contumace Capiendo.

county of is manifestly contumacious, and contemns the jurisdiction and authority of (here fully state the non-appearance, disobedience, together with the commands disobeyed, or the contempt in the face of the court, as the case may be), nor will he submit to the ecclesiastical jurisdiction; but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, we command you that you attach the said by his body, until he shall have made satisfaction for the said contempt; and how you shall execute this our precept notify unto and in nowise omit this, and have you there this writ. Witness Ourselves at Westminster, the day of in the year of our

reign.

Schedule (C.)

Whereas of in your county of whom lately at the denouncing of for contumacy, and by writ issued thereupon, you attached by his body until he should have made satisfaction for the contempt; now he having submitted himself, and satisfied the said contempt, we hereby empower and command you, that without delay you cause the said to be delivered out of the prison in which he is so detained, if upon that occasion and no other he shall be detained therein. Given under the seal of our of

Writ of Deliverance.

A. B. registrar, (or, deputy-registrar, as the case may be.)

Extracted by E. F.

Proctor.

1813.

53 Geo. 3. cap. 149.

*An Act for the further Support and Maintenance of Stipendiary Curates.*12 Ann. stat. 2.
c. 12.

36 G. 3. c. 83.

Canon Jac. 1.
1603.Non-resident
incumbents
neglecting to
appoint curates.

Penalty.

Bishops to
appoint salaries
to curates.

WHEREAS an act passed in the twelfth year of the reign of her Majesty, Queen Anne, intituled “ An Act for the better Maintenance of Curates within the Church of England, and for preventing any Ecclesiastical Persons from buying the next Avoidance of any Church Preferment :” And whereas another act passed in the thirty-sixth year of the reign of his present Majesty, intituled “ An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne’s Bounty, with respect to the Avoidance of other Benefices :” And whereas by a canon or ecclesiastical constitution made in the year of our Lord one thousand six hundred and three, in the reign of his Majesty King James the First, it was provided, that no curate should be permitted to serve in any place without examination and admission of the bishop of the diocese, or ordinary of the place having episcopal jurisdiction, in writing under his hand and seal, having respect to the greatness of the cure and meetness of the party ; and that the said curates and ministers, if they remove from one diocese to another, should not by any means be admitted to serve without testimony of the bishop of the diocese, or ordinary of the places as aforesaid whence they came, in writing, of their honesty, ability and conformity to the ecclesiastical laws of the church of England ; and that none shall serve more than one church or chapel upon one day, except that chapel be a member of the parish church, or united thereto, and unless the said church or chapel where such minister should serve in two places be not able in the judgment of the bishop or ordinary as aforesaid to maintain a curate : and whereas the provisions of the said acts and canon, and of the laws in force with respect to curates, have been found insufficient, and it is necessary that more effectual provision should be made to secure a competent maintenance to curates, in order to insure the due and regular performance of the service of the church of England in parishes where incumbents do not reside ; be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every incumbent of or person holding any benefice, donative, perpetual curacy or parochial chapelry, who does not or shall not duly reside thereon (unless such person shall do the duty of the same, having a legal exemption from residence, or a license to reside out of the same, or to reside out of the parsonage house or vicarage house, or other usual house of residence belonging to the same), and who shall, for the period of six months after the passing of this act, or after his induction or appointment, or after the death or removal of a former curate, neglect to nominate a proper curate, to be licensed by the bishop of the diocese or ordinary of the place having episcopal jurisdiction, to serve his church or chapel, or who shall, for the period of three months after the death or resignation of any curate who has served his church or chapel, neglect to notify to the bishop of the diocese such death or resignation, shall forfeit and lose all the benefit of any dispensation or exemption from residence, or license for non-residence, and be subject and liable to such and the like penalties for non-residence as if he had no such dispensation, exemption from residence, or license for non-residence ; and in every case in which no curate shall be nominated to the bishop or ordinary for the purpose of being licensed by him within such period as aforesaid, the bishop or ordinary is hereby authorised to appoint and license a proper curate, with such salary as is by this act allowed and directed, to serve the church or chapel of the parish or place in respect of which such neglect or default shall have occurred.

2. And be it further enacted, that it shall be lawful for the bishop or ordinary, and he is hereby required, subject to the several provisions hereinafter contained, to appoint to every curate so licensed, such sufficient salary as is allowed

1813.

lowed and specified in this act; and every instrument of license to be granted as aforesaid shall contain and specify the amount of the salary allowed by the bishop or ordinary to the curate, and such license, or any copy of the registry thereof made according to the provisions of this act, duly proved to be a true copy, shall be evidence of the amount of the salary so appointed to any curate in all courts of law or equity; and in case any difference shall arise between any rector or vicar, or person holding any benefice, donative, perpetual curacy or parochial chapelry, and his curate, touching such stipend or allowance, or the payment thereof, or of the arrears thereof, the bishop or ordinary, on complaint to him made, may and shall summarily hear and determine the same; and in case of wilful neglect or refusal to pay such stipend, salary or allowance, or the arrears thereof, shall be and is hereby empowered to sequester the profits of the benefice, donative, perpetual curacy or parochial chapelry, for and until payment of such stipend or allowance, or the arrears thereof; and no such license shall be valid, or exempt any incumbent, or person holding any benefice, donative, perpetual curacy or parochial chapelry, from any of the penalties of this act, or of any other act or acts of parliament, unless it shall contain and specify the amount of the stipend, salary or allowance to be paid to the curate.

Bishops may determine differences touching such salaries.

3. And be it further enacted, that it shall be lawful for the bishop or ordinary who shall grant any license to any curate to serve any church or chapel, where the rector or vicar, or person holding any donative, perpetual curacy or parochial chapelry, is not resident for four months in each year, to allot, if he shall think fit, for the residence of such curate, the parsonage or vicarage house, or usual house of residence of the person holding the donative, perpetual curacy or parochial chapelry, if there shall be any such house of residence in the parish or place, and the offices and gardens thereto belonging, or any part or parts thereof, during the time of such curate's serving the cure, or during the non-residence of such rector or vicar or person; and the license shall specify whether the curate is required to reside within the parish or place or not; and if the curate is permitted by the bishop or ordinary granting the license to reside out of the parish or place, the grounds upon which the curate is so permitted to reside out of the parish or place, shall be specified in the said license; and the distance of the residence of such curate from any church or chapel which he shall be licensed to serve shall not exceed five statute miles, except in cases of necessity, to be approved by the bishop or ordinary, and specified in the license.

Curates may be directed to reside in parsonage house in case of non-residence of incumbent.

4. Provided also, and be it further enacted, that the bishop or ordinary shall have power at any time, upon three months notice, by writing under his hand and seal, to direct the said curate to deliver up the said parsonage or vicarage house or usual house of residence, and the offices and gardens thereto belonging, or any of them; and the said curate shall peaceably deliver up the possession of the said premises allotted to him; and in case he shall refuse to do so, he shall forfeit or lose to the rector or vicar, all such parts of his stipend as shall then be unpaid or shall thereafter become due, and also the sum of fifty pounds to such rector or vicar, and which shall be recoverable in an action of debt.

Bishop may direct curate to give up possession of parsonage.

5. Provided always, and be it further enacted, that it shall not be lawful for the rector or vicar, or other person holding any donative, perpetual curacy or parochial chapelry, in any case in which the parsonage or vicarage or usual house of residence of the person holding any donative, perpetual curacy or parochial chapelry, shall have been assigned to the curate as a residence, to dispossess such curate, or take possession thereof, without and until the permission of the bishop or ordinary shall have been given in writing for that purpose; and it shall be lawful for the bishop or ordinary assigning any such house or residence to any curate, to sequester the profits of the benefice, donative, perpetual curacy or parochial chapelry to which the house shall belong, in any case in which possession shall not be given up to the curate, pursuant to any such assignment of residence, and until such possession shall be given: Provided also, that if any such curate shall refuse to give up possession of any such house, upon the order of the bishop or ordinary for that purpose, it shall be

Penalty.

Rector, &c. not to dispossess curate of house without order of bishop, who may sequester profits of living until possession given.

lawfu

1813.

Licenses and
revocations filed
in registry of
diocese.

Penalty.

Fee.

Salaries payable
to curates to be
in proportion to
value of bene-
fices.

lawful for the rector, vicar or person holding the donative, perpetual curacy or parochial chapelry, to which any such house shall belong, to apply to any justice of the peace or magistrate of the county, riding, province, city or place, for a warrant, for the taking possession thereof; and the justice of the peace to whom any such order of the bishop or ordinary for such possession is produced shall and he is hereby required thereupon to give a warrant for such possession, and possession may thereupon be taken of such house under such warrant at any time in the day time, by entering the same by force if necessary without any other proceeding, by ejectment or otherwise; any thing in any act or acts of parliament or law or laws to the contrary notwithstanding.

6. And be it further enacted, that every bishop or ordinary who shall grant or revoke any license to any curate under this act shall and he is hereby required to cause a copy of such license or revocation to be entered in the registry of the diocese within which the benefice, donative, perpetual curacy or parochial chapelry, in respect whereof any such license shall be granted or revocation made shall be locally situate, and an alphabetical list of such licenses and revocations shall be made out by the registrar of each diocese, and entered in a book and kept for the inspection of all persons, except as hereinafter excepted; and a copy of every such license and revocation, with respect to any benefice, donative, perpetual curacy or parochial chapelry, shall be transmitted by the said registrar to the churchwardens or chapelwardens of the parish, township or place to which the same relates, within one month after the grant of such license or revocation thereof, to be by them deposited in the parish chest, except as hereinafter excepted; and every registrar who shall refuse or neglect or omit to make any such entry, or to transmit any such copy, shall forfeit for every such offence or neglect the sum of five pounds, to be recovered as any penalty or forfeiture may be recovered under the said recited acts: Provided always, that such registrar shall for every such copy to be transmitted to such churchwardens or chapelwardens as aforesaid be entitled to a fee of ten shillings and no more, and that such fee shall be allowed in the accounts of such churchwardens or chapelwardens, and no other fee shall be taken by such registrar in respect of the execution of this act.

7. And be it further enacted, that in every case in which any person shall be instituted or inducted to any benefice, or nominated or appointed to any donative, perpetual curacy or parochial chapelry, after the passing of this act, and shall not duly reside thereon, unless such person shall do the duty of the same, having a legal exemption from residence, or a license to reside out of the same, or to reside out of the parsonage or vicarage or other usual house of residence belonging to the same, the bishop or ordinary shall appoint for the curate licensed to serve such benefice, donative, perpetual curacy or parochial chapelry of such non-resident incumbent or person as aforesaid in his absence, such salary, according to the gross annual value of the benefice, donative, perpetual curacy or parochial chapelry, as is hereinafter next mentioned; that is to say, such salary shall in no case be less than eighty pounds *per annum*, or than the said annual value of the benefice, donative, perpetual curacy or parochial chapelry, if the said value shall not amount to eighty pounds *per annum*; and such salary shall not be less than one hundred pounds *per annum*, or than the whole value as aforesaid, if the said value shall not amount to one hundred pounds *per annum*, in any parish or place where the population, according to the returns then last made in pursuance of any act or acts of parliament, shall amount to or exceed three hundred persons; and such salary shall not be less than one hundred and twenty pounds *per annum*, or the whole value as aforesaid, if the said value shall not amount to one hundred and twenty pounds *per annum* in any parish or place where the population shall appear as aforesaid to amount to or exceed five hundred persons; and such salary shall not be less than one hundred and fifty pounds *per annum*, or than the whole value as aforesaid, if the said value shall not amount to one hundred and fifty pounds *per annum* in any parish or place where the population shall appear as aforesaid to amount to or exceed one thousand persons: Provided always, that the annual value of all benefices, donatives, perpetual curacies or parochial chapelries, of which the said value, estimated as is herein provided, does not amount to one hundred

How the value
of benefices
under 150*l.* per
annum shall be
estimated.

1813.

hundred and fifty pounds *per annum*, shall be estimated from the returns made by the bishops of the several dioceses to the governors of Queen Anne's bounty, in pursuance of an address of the House of Lords, or from any future returns which may be made by the said bishops to the said governors, respecting parishes or places omitted in the said returns, or respecting parishes or places in the actual income of which it shall be made appear to the said bishops that any considerable variation has taken place, either by augmentations made by the said governors or otherwise.

8. Provided always, and be it further enacted, that in every case in which such bishop or ordinary shall appoint for such curate a salary equal to the whole annual value of such benefice, donative, perpetual curacy or parochial chapelry, such salary shall be subject to all such and the like charges and outgoings as may legally affect the value of such benefice, donative, perpetual curacy or parochial chapelry, and to any loss or diminution which may lessen such value without the wilful default or neglect of such incumbent.

Where curate's salary is of the value of benefice, it shall be liable to charges affecting it.

9. Provided always, that in every case when the bishop or ordinary shall find it necessary or expedient, for the obtaining any proper performance of duties ecclesiastical, to license the incumbent or perpetual curate of any parish or place to serve as curate of any adjoining or other parish or place, it shall be lawful for such bishop or ordinary to appoint for such incumbent or perpetual curate so licensed, a salary less by a sum not exceeding thirty pounds *per annum* than the salary which in the several cases hereinbefore mentioned the bishop or ordinary is respectively required by this act to appoint; and in every case where the bishop or ordinary shall find it necessary or expedient as aforesaid to license one and the same person to serve as curate for two adjoining or other parishes or places, it shall be lawful for such bishop or ordinary to direct that during such time as such curate shall serve such two churches or chapels, the salary to be received by him for serving each of the said churches or chapels shall be less by a sum not exceeding thirty pounds *per annum* than the salary which in the several cases hereinbefore mentioned the bishop or ordinary is required by this act to appoint: Provided always, that no such salary shall in any case be less than fifty pounds *per annum*, or than the whole value of the said benefice, donative, perpetual curacy or parochial chapelry, which such incumbent, perpetual curate or curate, shall be licensed to serve if the said value shall not amount to fifty pounds *per annum*: Provided always, that no incumbent, perpetual curate or curate shall be licensed to serve as curate in any church or chapel which is distant more than five statute miles from any church or chapel already served by such incumbent, perpetual curate or curate, except in cases of necessity to be approved by the bishop or ordinary, and specified in the license.

How salary adjusted where curate is permitted to serve in an adjoining parish;

Proviso.

Proviso.

10. Provided always, and be it further enacted, that in every case in which it shall be made out to the satisfaction of the bishop or ordinary of any diocese, that any incumbent or person holding any benefice, donative, perpetual curacy or parochial chapelry, is or has become non-resident or incapable of performing the duties thereof from age, sickness or other unavoidable cause, and that from these or from any other special and peculiar circumstances of the case great hardship and inconvenience would arise if the full amount of salary specified in this act should be allowed to the curate, then, and in such case, it shall be lawful for such bishop or ordinary to assign to the curate any such salary, less than the said full amount, as shall, under all the circumstances, appear to him just and reasonable: Provided always, that in the license granted in every such case it shall be stated that for special reasons the bishop or ordinary hath not thought proper to assign to the curate the full amount of salary allowed or required to be assigned by this act: Provided also, that such special reasons shall be entered fully and at large in a separate book, to be kept for that purpose, and to be deposited in the registry of the diocese, which book shall not be open to inspection unless with the leave of the bishop or ordinary, or by other proper authority.

Smaller salaries allowed to curates in certain cases.

Special reasons for such salaries to be stated in the license and registered.

11. Provided also, and be it further enacted, that it shall be lawful for the bishop or ordinary, upon the application of any rector, vicar or person holding any donative, perpetual curacy or parochial chapelry, the whole profit or income of

Bishop to allow rector, &c. to deduct from curate's salary of

1813.

for repairs to a limited amount in certain cases.

Curate to pay taxes of parsonage house in certain cases.

Where benefice exceeds 400l. an allowance may be made to curate of 100l. per annum, &c.

Not to empower bishops to assign to curates of persons holding benefices before passing of act or of certain other persons, any greater stipend than before.

Agreements contrary to

of which shall have been allotted to the curate, to allow such rector, vicar or other person, to deduct and retain therefrom in any or each year so much money, not exceeding in any case one fourth part of such profits or income or of the salary assigned to the curate, as shall have been actually laid out and expended during the year, in the repair of the parsonage, vicarage or other house of residence, in respect of which such rector, vicar or person aforesaid, or his executors, administrators or assigns, would be liable for dilapidations to the successor; and it shall also be lawful for the bishop or ordinary in like manner to allow any rector, vicar or other person aforesaid, having or holding any benefice, donative, perpetual curacy or parochial chapelry, the profits or income of which shall not exceed one hundred and fifty pounds *per annum*, to deduct and retain from the salary allotted to the curate, in each or any year, so much money as shall have been actually laid out and expended in such repairs as aforesaid, over and above the amount of the surplus remaining of such profits or income, after payment of the salary allotted to the curate, so as that the sum so deducted, after laying out such surplus, shall not in any year exceed one fourth part of the salary allotted to the curate.

12. Provided always, and be it further enacted, that in every case where the bishop or ordinary shall appoint, for the curate licensed to serve any benefice, donative, perpetual curacy or parochial chapelry, a salary not less than the whole gross annual value of the same, and shall, in addition to such salary, direct that such curate shall reside in the parsonage or vicarage house, or usual house of residence of the person holding such benefice, donative, perpetual curacy or parochial chapelry, such curate shall be liable, during his serving such cure, to the same taxes and parochial taxes in respect of such house and the appendages thereof, of which he may so be in occupation, as if he had been instituted or inducted to the said benefice, or nominated or appointed to the said donative, perpetual curacy or parochial chapelry.

13. Provided always, and be it further enacted, that in any parish or place where it shall appear to the satisfaction of the bishop that the actual annual income of such benefice, donative, perpetual curacy or parochial chapelry, clear of all deductions, exceeds the sum of four hundred pounds *per annum*, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, a salary or allowance of one hundred pounds *per annum*, notwithstanding the population of such parish or place may not appear as aforesaid to amount to three hundred persons; and that in any parish or place where the actual annual income shall appear as aforesaid, and where the population shall also appear as aforesaid to amount to or exceed five hundred persons, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, any larger stipend or allowance, so that the same shall not exceed by more than fifty pounds *per annum*, the amount of the stipend or allowance hereinbefore respectively required to be assigned to such curate.

14. Provided always, and be it further enacted, that nothing in this act contained shall authorise or empower any bishop or ordinary to assign to any curate of any person holding any benefice, donative or perpetual curacy or parochial chapelry, before the passing of this act, upon any such benefice, donative, perpetual curacy or parochial chapelry, held by such person before the passing of this act, and on which such person is or shall be non-resident by license or exemption, or to the curate of any person holding any benefice, donative, perpetual curacy or parochial chapelry, who shall duly reside thereupon, or who shall himself do the duty of the same, having a legal exemption from residence or a license to reside out of the same, or to reside out of the parsonage or vicarage house, or other usual house of residence belonging to the same, any greater stipend or allowance for the curate who shall be licensed to serve such benefice, donative, perpetual curacy or parochial chapelry, than is allowed by the statutes in force before the passing of this act, unless with the consent of the person holding such benefice, donative, perpetual curacy or parochial chapelry.

15. And be it further enacted, that all agreements and contracts made or to be made between persons holding benefices, donatives, perpetual curacies or parochial chapelries,

1819.

chapelries, and their curates, in fraud or derogation of the provisions of this act, or of the said act of the thirty-sixth year of his present Majesty's reign, and all agreements and contracts whereby any curate shall undertake, or in any manner bind himself to accept or be content with any stipend or salary less than that which shall be stated to be allowed in any license of such curate, shall be void to all intents and purposes in the law whatsoever, and shall not be set up, pleaded or given in evidence in any court of law or equity; and notwithstanding the payment and acceptance, in pursuance of any such contract or agreement, of any sum less than the sum specified in the license of such curate, or any receipt, discharge or acquittance, that may be given in cases of such payment and acceptance, the curate or his personal representatives, shall be and remain entitled to the full amount of what shall remain unpaid of the stipend, salary or allowance specified in his license; and the payment of what shall so remain unpaid shall, together with treble costs of recovering the same, be enforced by the bishop or ordinary by sequestration of the profits of the benefice, donative, perpetual curacy or parochial chapelry; provided that no sequestration shall, by virtue of this act, affect the profits of any benefice, donative, perpetual curacy or parochial chapelry, beyond the time during which the benefice, donative, perpetual curacy or parochial chapelry shall be held by the person liable to make the payments in respect of which such profits shall be sequestered.

act and to
36 G. 3. c. 83.
void.

Treble costs.

16. And be it further enacted, that no license or licenses shall, after the passing of this act, be granted, except in the case hereinafter mentioned, to any curate, to serve more than two churches in one day, or two chapels, or one church and one chapel, in one day; and every license granted to any curate for any greater number of churches or chapels shall be wholly void and of no effect, both as to the curate to whom the same shall be granted, and as to the incumbent or person to whom the benefice, donative, perpetual curacy or chapelry shall belong: Provided always, that where it shall appear to the bishop or ordinary of any diocese, in any case in which a curate shall before the passing of this act have served more than two churches or chapels, or in which, from the nature of the circumstances or the local situation of the churches or chapels, and the value of the benefices, donatives, perpetual curacies or parochial chapelries to which they belong, and in which the provision of this act cannot be enforced as to the assigning salaries of curates until the death or removal of the persons holding such benefices, donatives, perpetual curacies or parochial chapelries, that the granting licenses to any curate to serve three churches or chapels not being distant from each other more than four measured miles, is necessary to the obtaining any proper performance of ecclesiastical duties in any parish or place, it shall be lawful for the bishop in such cases to grant licenses to any curate to serve three such churches or chapels: Provided always, that in every such case the reasons for granting such licenses shall be stated by the bishop in each of such licenses, and such license shall not be valid or effectual unless the reasons for granting the same are inserted therein as aforesaid: and provided also, that the residence of such curate shall be so placed, that it shall not be necessary for him to travel more than fifteen miles in one day for the performance of the duties to be performed at such three churches or chapels.

No license
granted to serve
more than two
churches in one
day, except in
certain cases.

Licenses not to
be valid unless
the reasons are
inserted therein.

17. Provided also, and be it enacted, that if any incumbent of two or more benefices, donatives, perpetual curacies or parochial curacies or parochial chapelries, residing *bond fide* in the different proportions of each and every year, upon the same respectively, shall employ a curate from time to time upon such of the same from which he shall be absent during his own actual residence upon the other thereof, the stipend or salary to be assigned to such curate shall not exceed a due proportion of an annual salary calculated according to the provisions of this act, the bishop having regard to the greatness of the cure, and to the proportion of the year during which such curate shall have done or shall be engaged to do the duty of such benefices, donatives, perpetual curacies or parochial chapelries respectively.

Curate serving
in different
places in absence
of incumbent
interchangeably,
what salary to
receive.

18. And be it further enacted, that every person holding any benefice, dona-

Incumbent ap-
tive,

1813.

plying for license for non-residence to state what salary he proposes to give to curate.

Statement of particulars necessary to be given by persons applying for a license for non-residence.

Act to extend to benefices exempt as well as not exempt.

Ecclesiastical jurisdiction ascertained.

Commission to administer oaths not subject to stamp duty.

tive, perpetual curacy or parochial chapelry, who shall apply to the bishop or ordinary of the diocese for any license for non-residence, shall state in his application what salary he proposes to give to his curate, and whether the curate proposes to reside or not to reside in the parish, and if resident, whether in the parsonage house, and if not resident in the parish, at what distance therefrom, and at what place, and whether such curate serves any other parish as curate or incumbent, or has any other ecclesiastical preferment, or holds any donative, perpetual curacy or parochial chapelry, or officiates in any other church or chapel, and shall also state the gross value of the benefice, donative, perpetual curacy or parochial chapelry, in respect of which he applies for a license not to reside, and it shall not be lawful for the bishop or ordinary to grant any such license, unless the application shall contain a statement of the several particulars aforesaid; and all such applications and specifications shall be kept and filed by the registrar of the diocese in a separate book, and preserved from public inspection, and disclosed only in like manner and in such cases as is before directed as to the copies of licenses wherein the full salary allowed or required by this act is not granted to curates.

19. And be it further enacted, that every bishop or ordinary to whom any application shall be made for any license, for a curate to serve for any person exempt by law from residence in his benefice, donative, perpetual curacy or parochial chapelry, shall, before he shall grant such license, require of the person for whom such curate is to serve, a statement of all the particulars by this act required to be stated by any person applying for a license for non-residence as aforesaid; and it shall not be lawful for any bishop or ordinary to grant a license to any curate to serve the church or chapel of any person exempt from residence, until a statement of all such particulars as aforesaid shall have been delivered to him, and such statement shall be kept and filed, and preserved from public inspection, and disclosed only in like manner, and in such cases as is before directed, as to the statements of persons applying for licenses for non-residence.

20. And be it enacted, that this act and the several provisions herein contained shall extend, and be deemed and construed to extend, to all benefices, donatives, perpetual curacies and parochial chapelries, exempt as well as not exempt, and to all peculiars; and it shall moreover be lawful for the churchwardens or chapelwardens of any parish or chapelry which shall be exempt or subject to any peculiar jurisdiction, from time to time to make complaint to the bishop in whose diocese such parish or chapelry shall be locally situate, of non-residence of the incumbent and the want of due provision for the cure, and, proof being made of the fact in such manner as the bishop or ordinary shall direct, to the satisfaction of the bishop or ordinary, who is hereby empowered to administer an oath, if he shall think fit to require proof upon oath (and which oath any justice of the peace shall also have power to administer), it shall be lawful for the said bishop or ordinary to proceed to the augmentation of the curate's salary, or appointment of a curate, under the provisions of this act.

21. And be it further enacted, that where any benefice, donative, perpetual curacy or parochial chapelry, shall be locally situate within the limits of more than one province or diocese, or between the limits of two or more dioceses, or any of them, the archbishop or bishop to the cathedral church of whose province or diocese the parish church thereof shall be nearest in local situation, shall have, use and exercise all the authorities and powers which such archbishop or bishop could or would have used or exercised if the same benefice, donative, perpetual curacy or parochial chapelry had not been locally situate in his province or diocese; provided that the peculiars belonging to any archbishop or bishop, though locally situate in another diocese, shall continue subject to such archbishop or bishop to whom they belong, as well for the purposes of this act as for all other purposes of ecclesiastical jurisdiction in the law whatsoever.

22. And be it further enacted, that no commission issued by any bishop or ordinary to any commissary or commissaries appointed to administer the oaths, required to be taken by any curate for the purpose of any license, shall be subject

ject to any stamp duty ; any thing contained in any act or acts of parliament to the contrary notwithstanding.

1813.

23. Provided also, and be it further enacted, that it shall be lawful for every archbishop and bishop, summarily and without formal process or suit, to use and exercise all and every the powers and authorities, and to do all and every the acts, matters and things which such archbishop or bishop can use, exercise or do, under or by virtue of the provisions of this act.

Proviso for powers of archbishops and bishops.

24. And be it further enacted, that nothing in this act contained shall be deemed or taken to vary, prejudice, alter or affect, otherwise than is expressly provided, any power, right or authority already vested in any bishop, touching curates or their salaries, under or by virtue of any statute, canon, usage or otherwise howsoever.

Proviso for powers of bishops.

25. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to repeal or alter the provisions contained in any act of parliament, or any other provision of law for the due celebration of divine service in any church or chapel ; or for the discharge of any other duty of any rector or vicar, or person holding any donative, perpetual curacy or parochial chapelry, by himself or his curate.

Proviso for celebration of divine service.

26. And be it further enacted, that nothing in this act contained shall extend to that part of the United Kingdom called Ireland.

Ireland.

54 Geo. 3. c. 6.

An Act to stay, until the Twentieth Day of April One thousand eight hundred and fourteen, Proceedings in Actions under an Act passed in the Forty-third Year of His present Majesty, to amend the Laws relating to Spiritual Persons.

[6th December, 1813.]

‘ WHEREAS many of the provisions of an act passed in the forty-third year of the reign of his present Majesty, intituled “ An Act to amend the Laws relating to Spiritual Persons holding of Farms ; and for enforcing the Residence of Spiritual Persons on their Benefices in England,” have given occasion to many vexatious prosecutions ; which it is expedient to prevent the further proceeding in at present ; be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this act, it shall and may be lawful for the defendant in any action already commenced or which shall be commenced, for any penalty or forfeiture under the said recited act of the forty-third year aforesaid, previous to the twentieth day of April one thousand eight hundred and fourteen, to apply to the court in which such action shall be brought, during the sitting of such court, or to any judge of such court during vacation, for stay of proceedings in such action ; and such court, and such judge, respectively, are hereby required to stay proceedings accordingly, until the said twentieth day of April one thousand eight hundred and fourteen.

43 G. 3. c. 84.

Staying proceedings in actions brought.

[Continued to 20th May, 1814, c. 44. post. 20th July, 1814, c. 54. § 13. post. The Act 43 G. 3. c. 84. explained and amended, c. 175. post.]

54 Geo. 3. c. 175.

1814.

An Act to explain and amend several Acts relating to Spiritual Persons holding of Farms ; and for enforcing the Residence of such Persons on their Benefices, in England, for One Year, and from thence until Six Weeks after the Meeting of the then next Session of Parliament.

[30th July, 1814.]

‘ WHEREAS an act was passed in the forty-third year of the reign of his present Majesty, intituled “ An Act to amend the Laws relating to Spiritual Persons holding of Farms ; and for enforcing the Residence of Spiritual Persons on their Benefices in England :” And whereas certain of the provisions

43 G. 3. c. 84.

1814.

21 H. 8. c. 13.

53 G. 3. c. 149.

Actions for
penalties under
43 G. 3. c. 84.
when to be
commenced.

Bishops em-
powered to
punish past non-
residence.

Archbishops,
&c. may levy
penalties and
costs by seques-
tration.

Penalties not
levied by bishop,
recovered by
action.

Proviso for ap-
peal under
43 G. 3. c. 84.
§ 19.

Proceedings in
cases of remis-
sion of penalties
by archbishops
and bishops.

‘ provisions of the said act have been found inconvenient ; and it is expedient
‘ that the said act be amended, and that further provision be made for the better
‘ carrying into execution the purposes thereof : and whereas it is also expe-
‘ dient to amend certain provisions contained in an act, passed in the twenty-
‘ first year of the reign of King Henry the Eighth, intituled “ Spiritual Persons
‘ abridged from taking Pluralities of Livings and from taking of Farms ; ” and
‘ also in an act passed in the last session, intituled “ An Act for the further Sup-
‘ port and Maintenance of Stipendiary Curates ; ” ’ be it therefore enacted by
the King’s most excellent Majesty, by and with the advice and consent of the
Lords Spiritual and Temporal, and Commons, in this present Parliament assem-
bled, and by the authority of the same, that no action of debt, bill, plaint or
information, against any spiritual person, for the recovery of any penalties or
forfeitures under or by virtue of the said first recited act, shall be commenced or
filed in any of his Majesty’s courts of record at Westminster, or the court of
great sessions in Wales, until the first day of May after the expiration of the
year in which any alleged offence against the said act shall have taken place.

‘ 2. And whereas it is expedient that the archbishops and bishops of their
‘ respective dioceses should be further empowered to punish past non-residence,
‘ as well as to compel residence in future ; ’ be it enacted, that in all cases in
which any spiritual person shall have become subject to any penalty or for-
feiture for any non-residence, it shall be lawful for the archbishop or bishop
within whose diocese such penalty or forfeiture shall have arisen, to proceed
against such spiritual person for such past non-residence ; and to levy the pe-
nalties incurred thereby under the said first recited act as amended by this act,
by monition and sequestration, and to direct the application thereof in like
manner, and subject to the same regulations, and with like powers of remitting
or ordering the repayment of any part of such penalties, as is directed or al-
lowed in the said act, in case of non-compliance with any order for residence.

3. And be it further enacted, that every archbishop or bishop may levy any
costs, charges or penalties by this act imposed upon any spiritual person, sub-
ject to his jurisdiction or locally situate therein, who shall, under the provisions
of the said first recited act, or this act, become liable thereto, in the same manner
as any costs may be levied upon any spiritual person by any archbishop or
bishop under the provisions of the said act, and may order the application of
such penalties in such manner as is by the said act directed concerning any
money levied by sequestration.

4. And be it also enacted, that every penalty under the first recited act, or
this act, in respect of which no proceeding shall have been had by monition for
the recovery thereof, before the first day of May after the same shall have been
incurred, may be recovered and applied by action or suit, in like manner as the
penalties for non-residence are directed to be recovered and applied by any
action or suit under the said first recited act and this act.

5. Provided always, and be it further enacted, that it shall be lawful for any
spiritual person to appeal against any proceedings had under the provisions of
this act, in the same manner as is directed in relation to any appeal under the
said first recited act.

6. Provided always, and be it further enacted, that in every case in which
any archbishop or bishop shall think proper, under all the circumstances there-
of, after proceeding by monition for the recovery of any penalty under the said
first recited act or under this act, to remit the whole or any part of the said
penalty, such archbishop shall forthwith transmit to his Majesty in council,
and such bishop shall transmit to the archbishop of the province to which he
belongs, a list of such cases as have occurred in his or their respective dioceses,
specifying the nature and special circumstances of each case, and the reasons
for the said remission, in the same manner as is directed in relation to the
licenses for non-residence granted in non-enumerated cases, under the said
first recited act ; and it shall thereupon be lawful for his Majesty in council,
or for the said archbishop, as the case may be, to allow or disallow such re-
mission in whole or in part, in the same manner as the allowance or disallow-
ance of the said licenses for non-residence is provided for by the said act ; the
decision

decision of the said archbishop, with respect to cases transmitted to him from any such bishop, to be final.

1814.

7. ' And whereas doubts have been entertained, whether penalties and forfeitures imposed by the said first recited act might not be recovered for more than one year; ' be it declared and enacted, that no penalties or forfeitures shall be recovered by any proceeding or action, other and further than those to which such spiritual persons may be liable under the provisions of the said act, for any offence alleged to have been committed against the provisions of the said act or this act during the year ending on the thirty-first day of December immediately preceding the commencement of such proceeding or action.

Decision of archbishop final.

When penalties recoverable.

8. And be it further enacted, that, for all the purposes of the said first recited act and of this act, the year shall be deemed to commence on the first day of January, and be reckoned therefrom to the thirty-first day of December, both inclusive; and all licenses granted under the said act, other than such as shall be granted for periods less than a year, on account of illness or other temporary cause, shall be granted to commence and terminate at such respective periods as aforesaid, for the year or years for which they shall be granted; save and except such as it may be necessary to grant for the remainder of any year after the expiration of any license now subsisting.

Year for purposes of act when to commence, &c. licenses, except for temporary causes, granted accordingly.

9. And be it further enacted, that, for all the purposes of the said first recited act and of this act, the months therein named shall be taken to be calendar months; except in any case in which any month or months are to be made up of different periods less than a month; and in every such case thirty days shall be deemed a month.

Months how computed.

10. And be it further enacted, that so much of the said first recited act as enacts, that any person neglecting to notify any reason of any exemption from residence, for which it is not necessary to obtain a license, shall not be deemed to be entitled to the benefit of such exemption, shall be and the same is hereby repealed; and, from and after the passing of this act, every spiritual person having lawful cause of exemption from residence under the said act, or any other act, and being non-resident, who shall neglect to make such notification thereof, as in the said act is directed, shall forfeit and pay for every such offence the sum of twenty pounds, to be levied by sequestration, if not otherwise paid after monition to pay the same, of the profits of the benefice, donative, perpetual curacy or parochial chapelry, for which he shall claim exemption from residence, by the archbishop or bishop of the diocese to whom the notification ought to be made, to be applied as he may direct, to useful and charitable purposes, with the like power of remitting or ordering the repayment of any part of such penalties, as is directed or allowed in the said act, in cases of non-compliance with an order for residence.

43 G. 3. c. 84. § 25, 26. in part repealed. Cause of exemption neglected to be notified.

Penalty.

11. And be it further enacted, that so much of an act passed in the last session of parliament, intituled " An Act for the further Support and Maintenance of Stipendiary Curates," as enacts, that every incumbent of or person holding any benefice, donative, perpetual curacy or parochial chapelry, who does not nor shall not duly reside thereon (except as therein excepted), and who shall, for the period of three months after the death or resignation of any curate who has served his church or chapel, neglect to notify to the bishop of the diocese such death or resignation, shall forfeit and lose all the benefit of any dispensation or exemption from residence, or license from non-residence, and be subject and liable to such and the like penalties for non-residence, as if he had no such dispensation, exemption from residence or license for non-residence, shall be and the same is hereby repealed; and, from and after the passing of this act, every such person shall, for such neglect, forfeit and pay the sum of twenty pounds, to be levied, applied and remitted, in like manner as is hereinbefore provided with respect to the neglect of notifying exemptions from residence.

53 G. 3. c. 149. § 1. in part repealed.

Penalty.

12. And be it further enacted, that every spiritual person having any benefice, donative, perpetual curacy or parochial chapelry, and who shall not have, nor during any part of his incumbency have had any house of residence thereon, and who shall have resided nine months in the year within the limits of his benefice,

In case no house of residence, what deemed a residency.

1814.

Houses purchased by governors of Queen Anne's bounty deemed residences.

Sinecure rectories.

Continuance of act.

benefice, donative, perpetual curacy or parochial chapelry, shall not be liable to any penalties on account of non-residence, nor be obliged to take out any license therefore; but that the same shall be deemed a legal residence to all the intents and purposes of the said first recited act and this act; and in all returns made by the bishops, persons so residing shall be returned as resident.

13. 'And whereas the governors of Queen Anne's bounty have in some instances purchased, or may hereafter purchase houses not situate within the parishes for which they are purchased, but so contiguous as to be equally convenient and suitable for the residence of the officiating minister thereof: Be it enacted, That such houses, having been previously approved by the archbishop or bishop, by writing under his hand, shall be deemed parsonage-houses appertaining to such livings, to all intents and purposes whatsoever.

14. And be it further enacted, That in all cases of sinecure rectories having vicarages endowed, the residence of the vicar in the rectory-house shall be deemed a sufficient legal residence, to all intents and purposes whatever.

15. And be it further enacted, That this act shall continue and be in force for one year, and from thence until six weeks after the meeting of the then next session of parliament.

1815.

55 Geo. 3. c. 147.

An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe-houses or Glebe-lands, belonging to their Benefices, for others of greater Value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands, so taken in exchange, to such Benefices as Parsonage or Glebe-houses and Glebe-lands, and for purchasing and annexing Lands to become Glebe in certain cases; and for other Purposes.

WHEREAS in divers ecclesiastical benefices, perpetual curacies and parochial chapelries, the glebe-lands, or some part or parts thereof, lie at a distance from and are inconvenient to be occupied with the parsonage or glebe houses, and the parsonage or glebe houses of divers benefices, perpetual curacies and parochial chapelries, are mean and inconvenient; and it would often tend much to the comfort and accommodation, and thereby also to promote the residence of the incumbents of such benefices, perpetual curacies and parochial chapelries, if the glebe lands and parsonage or glebe houses thereof could be by law exchanged for other lands of greater value, or more conveniently situated, and for other and more convenient houses: And whereas there are also divers lands and tenements which have been accustomed to be granted or demised by the incumbent for the time being of certain ecclesiastical benefices, perpetual curacies or parochial chapelries, for one, two, or three lives, or for a term or terms of years absolutely or determinable on a life or lives, as being holden by copy of court roll or otherwise, under some manor or lordship belonging to such benefices, perpetual curacies or parochial chapelries, and it would therefore be advantageous to the said benefices if the same lands and tenements, or some of them, or some part thereof, were annexed as glebe to the living or benefice to which they belong; may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the passing of this act, it shall be lawful for the parson, vicar or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, by deed indented, and to be registered in manner hereinafter mentioned, and with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate (to be signified as hereinafter is mentioned), to grant and convey to any person or persons, and to his, her, or their heirs and assigns, or otherwise, as he or they shall direct or appoint, or to any corporation, sole or aggregate, and his or their successors; the parsonage or glebe house, and the out-buildings, yards, gardens and appurtenances thereof, and the glebe-lands, and any pastures, feedings or rights of common

Power to exchange parsonage houses and glebe lands for other houses and lands.

1815.

common or way appendant, appurtenant or in gross, or any or either of such house, out-buildings, yards, gardens and glebe-lands, pastures, feedings, or rights of common or way, or any part or parts thereof, belonging to any such benefice, perpetual curacy or parochial chapelry, in lieu of and in exchange for any house, out-buildings, yards, gardens, and appurtenances, and any lands, or any or either of them, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry or not, but so as that the same be situate conveniently for actual residence or occupation by the incumbent thereof, the same also being of greater value or more conveniently situated than the premises so to be given in exchange, and being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice, and also for the parson, vicar or incumbent for the time being of the same benefice, perpetual curacy or parochial chapelry, by the same or a like deed, and with the like consent, and testified as aforesaid, to accept and take in exchange to him and his successors for ever, from any person or persons, or corporation sole or aggregate, any other house, out-buildings, yards, gardens, easements and appurtenances, and any other lands, or any or either of such houses, out-buildings, yards, gardens, lands, easements and appurtenances, the same respectively being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice, and being of greater value or more conveniently situated, in lieu of and in exchange for such parsonage or glebe house, out-buildings, yards, gardens, glebe-lands and appurtenances, and such pastures, feedings and rights of common or way, or any or either of them, so to be granted and conveyed, and which said house, out-buildings, yards, gardens, lands and appurtenances so to be accepted and taken in exchange, by any parson, vicar, or other incumbent, shall for ever, from and after such grant and conveyance thereof, be the parsonage and glebe house and glebe lands and premises of the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and shall become annexed to the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent and his successors accordingly, without any license or writ of *Ad quod damnum*, and that the whole, or any part or parts of the said house, out-buildings, lands and premises so to be annexed, which before such annexation were of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure, the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that nothing in this act contained shall extend, or be construed to authorise the granting or conveying in exchange by any parson, vicar, or other incumbent, either at one and the same time, and by one and the same incumbent, or at different times, and by several incumbents, and in several portions, any greater quantity in the whole than thirty statute acres of the glebe lands of any benefice, perpetual curacy or parochial chapelry: Provided also, that in all cases when such exchange shall be made by any owner or owners having any less estate or interest than in fee simple of or in the messuage, buildings, lands and premises so to be by him, her or them granted or conveyed in exchange, or being any corporation aggregate or sole, or person or persons under any legal disability, the parsonage house, out-buildings and glebe-lands respectively to be so taken in exchange as aforesaid, shall at the time of making such exchange be of equal value with, or not of less value than the said messuage, buildings, lands and premises respectively so to be granted and conveyed in exchange to such parson, vicar or other incumbent.

Writ of Ad quod damnum.

Proviso.

Proviso.

2. Provided always, That in all cases where the lands or any part or parts thereof to be conveyed in exchange to any parson, vicar or incumbent, and to be annexed as glebe to any benefice, perpetual curacy or parochial chapelry, under the authority of this act, shall either separately or jointly with other lands or tenements be, at the time of such conveyance by any means whatsoever, exempt or discharged from the render of tithes in kind, or subject to or covered by any modus, composition real or prescription in lieu of tithes in kind, then the lands or premises to be conveyed in exchange by such parson, vicar or incumbent, and which before such exchange were glebe of or belonging to the

Premises given in exchange subject to same tithes, &c. as those taken in exchange (except in certain cases.)

1815.

After exchange
incumbent not
to be evicted.

same benefice, perpetual curacy or parochial chapelry, shall (unless it be agreed between the parties to such exchange that the same shall become and be subject to the render or payment of tithes in kind) from and immediately after such conveyance in exchange (in case such first-mentioned lands are situate in the same parish, vicarage, or parochial chapelry, with the said lands or premises, before glebe thereof, or belonging thereto, but not otherwise) become and be either exempt or discharged from tithes in kind, in like manner with or (as the case may be) subject to or covered by the same modus, composition real or prescription in lieu of tithes in kind, as the lands so to be conveyed in exchange to the said parson, vicar or incumbent, were exempt or discharged from, or subject to or covered by before such exchange was made.

3. Provided also, and be it further enacted, That no incumbent of any benefice, perpetual curacy or parochial chapelry, wherein or in respect whereof any such exchange as is authorised by this act shall have taken place, or his successors, shall at any time thereafter be evicted or ejected from the peaceable and quiet possession and enjoyment of the house, out-buildings, lands and premises, or any of them, which shall have been granted and conveyed in exchange to such incumbent, according to the provisions of this act, by or by reason or in consequence of any person or persons, or corporation sole or aggregate, claiming right thereto, through any title prior to that of or through any defect of title of the person or persons, or corporation sole or aggregate, granting or conveying the same in exchange; but nevertheless that it shall and may be lawful for such person or persons, or corporation, claiming such right, and he, she or they is and are hereby authorised and empowered to have, use, exercise and enjoy all such and the same powers and remedies in trying his, her, or their right to and in obtaining and recovering possession of any house, out-buildings, land and premises, or any of them, which shall have been granted in exchange by any such incumbent, as the person or persons, or corporation sole or aggregate, so claiming would, in case this act had not been made, have been enabled to use, exercise and enjoy in trying the right to and in recovering and obtaining possession of the house, out-buildings, lands and premises, or any of them, in exchange for which the same shall have been so granted and conveyed by any such incumbent, under the authority of this act.

Power to annex
premises be-
longing to ma-
nors, and here-
tofore grantable
and demisable
as copyhold or
otherwise.

4. And be it further enacted, That from and after the passing of this act, it shall and may be lawful to and for the parson, vicar or other incumbent of any ecclesiastical benefice, perpetual curacy or parochial chapelry, of or to which benefice, perpetual curacy or parochial chapelry, any manor or lordship is parcel or appurtenant, and as parcel of or belonging to which manor or lordship any lands or tenements are or have been usually granted or demised, or grantable or demisable by copy of court roll, or otherwise, for any life or lives, or for any term or number of years absolutely or determinable on any life or lives, by deed indented (and to be registered as hereinafter mentioned) with the consent of the patron and bishop (to be testified as hereinafter mentioned) to annex to the said benefice, perpetual curacy or parochial chapelry, as and for glebe land, or parsonage or glebe house or houses and buildings thereof, all or any part or parts of such lands or tenements, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry, or not, and that from and after such annexation the said lands and tenements so annexed shall cease to be thereafter grantable or demisable by any incumbent of the said benefice, perpetual curacy or parochial chapelry (otherwise than as glebe lands are or shall be by law grantable or demisable) but shall from thenceforth be and become, and be deemed and taken to be the glebe lands and parsonage or glebe house or houses of and annexed to such benefice, perpetual curacy or parochial chapelry, for ever, to all intents and purposes whatsoever, without any license or writ of *Ad quod damnum*; the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always that no such annexation shall in anywise annul, determine or affect any grant or demise then previously made and actually existing of the said lands and tenements so to be annexed as last aforesaid.

Such annexa-
tions not to an-
nul existing
grants or de-
mises.

Power to annex

5. ' And whereas it is expedient to enlarge and amend the laws now in being
' for

1815.

parsonage
houses, &c. by
benefaction.

‘ for providing parsonage houses with suitable out-buildings and other accommodations for the residence of the clergy, by way of benefaction ;’ be it further enacted, That where there shall be no existing parsonage or glebe house on any ecclesiastical benefice, perpetual curacy or parochial chapelry, or where the existing parsonage or glebe house, or the out-buildings thereof, on any such benefice, perpetual curacy or parochial chapelry, shall be inconvenient or too small or incommodiously situate, it shall be lawful from and after the passing of this act, for any person or persons, being owners in fee simple, or for any corporation sole or aggregate, with or without confirmation, as the case may require, and by and with such consent, and to be signified as hereinafter mentioned, of the incumbent, patron and bishop, to give, grant and convey by deed indented, and to be registered as hereinafter is mentioned, to any parson, vicar, or other incumbent of such benefice, curacy or chapelry, for the time being, who shall also have power to accept the same, any messuage, out-buildings, yard, garden, orchard and croft, or any of them, with their appurtenances, or any right of way, or other easement, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry, or not, but so as that the same be conveniently situate for actual residence or occupation by the incumbent thereof; and which messuage, out-buildings, yard, garden, orchard and croft, with their appurtenances or right of way, or other easement, shall for ever, from and after such grant and conveyance thereof, be and become annexed to and be deemed and taken to be the parsonage or glebe house, out-buildings, yard, garden, orchard, croft, appurtenances and right of way, or other easement of the said benefice, curacy or chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by the said incumbent and his successors accordingly, without any license or writ of *Ad quod damnum*; the statute of mortmain, or any other statute or law to the contrary notwithstanding; and from and after such grant and annexation it shall be lawful for the incumbent for the time being of the said benefice, curacy or chapelry, to which such grant and annexation shall have been made, (with the consent in writing of such patron and bishop under their hands and seals to be duly registered as hereinafter mentioned), to take down and remove any parsonage or glebe house and out-buildings, or any part thereof, which before such annexation belonged to the said benefice, curacy or chapelry (if the same or part thereof cannot be better applied to the permanent advantage of such benefice, curacy or chapelry,) and with the like consent as aforesaid, to apply the materials, or the produce thereof if sold, towards some lasting improvement of the said benefice, curacy or chapelry: Provided always, that nothing herein contained shall extend to enable any persons, being infants or lunatics, or femmes covert, without their husbands, to make any such gift, grant or conveyance; any thing in this act contained to the contrary in anywise notwithstanding.

Writ of Ad
quod damnum.

Proviso.

6. ‘ And whereas an act was passed in the seventeenth year of the reign of his present Majesty, intituled, “ An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing or purchasing Houses, and other necessary Buildings and Tenements, for the use of their Benefices:” And whereas one other act was passed in the twenty-first year of the reign of his present Majesty, intituled, “ An Act to explain and amend an Act made in the seventeenth year of the Reign of his present Majesty, intituled ‘ An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing or purchasing Houses and other necessary Buildings and Tenements, for the use of their Benefices’:” And whereas there are many ecclesiastical benefices, perpetual curacies and parochial chapelries to which no glebe land, or only a small portion of glebe land is belonging; and it is therefore expedient to enable the making provision by purchase, for the annexation of glebe land to such benefices, perpetual curacies and parochial chapelries;’ Be it therefore further enacted, That from and after the passing of this act, it shall be lawful for the parson, vicar or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, the existing glebe whereof shall not exceed five statute acres,

17 G. 3. c. 53.

21 G. 3. c. 66.

Power to purchase lands,

1815.

to be annexed to
benefices as
glebe land
thereof.

Copyhold lands
so purchased
holden as free-
hold ;
and by mort-
gage of tithes,
&c. to raise sum
for such pur-
chase.
17 G. 3. c. 53.

not exceeding
two years net
income.

with the consent of the patron and bishop, to be signified as hereinafter mentioned, to purchase any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, whether being within the local limits of the said benefice, perpetual curacy or parochial chapelry, or not, but so as that the same be situate conveniently for building a parsonage or a glebe house, and out-buildings, and for gardens and glebes thereof, or for any of the said purposes, and for actual residence and occupation by the incumbent thereof, such land being of freehold tenure, or being copyhold of inheritance, or for life or lives, holden of any manor or lordship belonging to the same benefice, perpetual curacy or parochial chapelry ; and which lands so purchased shall for ever, from and after the grant and conveyance thereof, be and become annexed to and glebe of such benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent, and his successors accordingly, without any license or writ of *Ad quod damnum* ; and the whole or any part or parts of the said lands, which before such annexation were or was of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure ; the statute of mortmain, or any other statute or law to the contrary notwithstanding.

7. And, for the better effectuating such purchases as aforesaid, be it further enacted, That it shall be lawful for such parson, vicar or other incumbent for the time being, with the consent of the patron and bishop (to be signified as hereinafter is mentioned), to borrow and take up at interest (over and besides the monies authorised to be borrowed under the authority and for the purposes of the said recited act of the seventeenth year of the reign of his present Majesty) such sum or sums of money as shall be certified by a valuation upon oath of some skilful and experienced surveyor to be the true and just value of the said lands at the time of the purchase thereof, not exceeding two years clear income and produce of such benefice, perpetual curacy or parochial chapelry, after deducting all taxes and other out-goings whatever, except the salary to the assistant curate (if any) ; and as a security for repayment of the money so to be borrowed, to mortgage the tithes, rents and other profits and emoluments of or belonging to such benefice, perpetual curacy or parochial chapelry, to any person or persons who shall advance such money by one or more deed or deeds (to be registered as hereinafter mentioned) for the term of twenty-five years, or until the principal money to be borrowed, with interest for the same, and all costs and charges attending the recovery thereof, shall be fully paid off and satisfied ; which mortgage deed or deeds shall bind, as well such parson, vicar or other incumbent of such benefice, perpetual curacy or parochial chapelry, executing such mortgage or mortgages, as also his successors, and a counterpart thereof shall be executed by the mortgagee or mortgagees, and be kept by the incumbent ; and the parson, vicar or incumbent for the time being of such benefice, perpetual curacy or parochial chapelry, shall and he is hereby required to pay or cause to be paid to the mortgagee or mortgagees yearly and every year, as the same shall become due, or within one month afterwards, as well the interest of the principal money secured by such mortgage or mortgages, as also the further sum of five pounds *per centum per annum* for the principal money originally advanced on such mortgage or mortgages ; and that every incumbent who shall not reside twenty weeks in every year upon such benefice, perpetual curacy or parochial chapelry, computing each year from the date of the first or only mortgage deed, shall and he is hereby required, instead of the said sum of five pounds *per centum per annum*, to pay within the period aforesaid the sum of ten pounds *per centum per annum* of the principal money originally advanced on such mortgage or mortgages, until the whole of such principal money, with the interests, costs and charges shall be fully paid off and discharged ; and that every such incumbent who shall pay only five pounds *per centum per annum* of such principal money shall, at the time of payment thereof, produce and deliver to the mortgagee a certificate under the hands of two rectors, vicars or other officiating ministers of some parishes near or adjoining, signifying that he had resided twenty weeks upon the said benefice, perpetual curacy or parochial chapelry, within the year for which such payment became

became due; and in default of payment of the principal, interest, costs and charges in manner aforesaid, the bishop shall have power to sequester the profits of such benefice, perpetual curacy or parochial chapelry, until such payment shall be made; and if at any time or times the said principal and interest, or any part thereof, shall be in arrear and unpaid for the space of forty days next after the yearly day of payment whereon the same shall have become due, it shall be lawful for the mortgagee or mortgagees, and his, her or their executors, administrators, or assigns, to recover the same, or such part thereof, as shall be so unpaid, and the costs and charges attending such recovery, by distress and sale, in such manner as landlords are or shall be by law authorised to recover rents in arrear; and in order that the payment of the same principal and interest may, in case of avoidance by death or otherwise, be justly and equitably ascertained and adjusted between the parson, vicar or incumbent avoiding such benefice, perpetual curacy or parochial chapelry, or his representatives, and his successor, in such proportions as the profits of such benefice, perpetual curacy or parochial chapelry, shall have been received by them respectively for the year in which such death or avoidance shall happen, such payment shall in case any difference shall arise in settling the proportions thereof, be ascertained and determined by two indifferent persons, the one to be named by the person making such avoidance, or his representatives in case of his death, and the other by the said successor; and in case such nominees shall not be appointed within the space of two calendar months next after such death or avoidance, or in case they shall not agree in settling such proportions within the space of one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman to be nominated by the bishop, whose determination shall be final and conclusive between the parties.

8. And be it further enacted, That for promoting the purposes of this act, it shall and may be lawful for the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, from and out of the monies which have arisen or shall from time to time arise from that bounty, to advance and lend, in respect of each benefice, perpetual curacy or parochial chapelry, the clear annual improved value whereof shall not exceed the sum of fifty pounds, any sum not exceeding the sum of one hundred pounds without interest, but for repayment of the principal whereof such mortgage as is hereinbefore mentioned shall be executed; and also to advance or lend, for or in respect of each benefice, perpetual curacy or parochial chapelry, the clear annual improved value whereof shall exceed the sum of fifty pounds, any sum not exceeding two years yearly income of such benefice, upon such mortgage aforesaid, and to receive interest for the same at any rate not exceeding four pounds *per centum per annum*.

Governors of Queen Anne's bounty empowered to lend money.

9. And be it further enacted, That it shall and may be lawful for any college or hall within the universities of Oxford or Cambridge, or for any other corporate bodies, being owners of the patronage of ecclesiastical livings or benefices, to advance and lend any sum or sums of money of which they have the power to dispose, for the convenience of the parson, vicar or other incumbent for the time being of any benefice, perpetual curacy or parochial chapelry within the patronage of such college or hall, upon mortgage as hereinbefore directed, either upon interest or without any interest.

Colleges may lend with or without interest.

10. Provided always and be it further enacted, That when any parson, vicar or other incumbent as aforesaid, shall be desirous of effecting any exchange, purchase or mortgage under the provisions of this act, the consent of the patron and bishop to every deed of exchange, conveyance or mortgage, shall, before the same shall be signed and sealed by the parson, vicar or other incumbent, be signified by the said patron and bishop respectively, being made parties to, and signing and sealing the said deed in the presence of two or more credible persons, who shall by indorsement thereon attest such signing and sealing, and in which attestation it shall be expressed that the same deed was so signed and sealed by such patron and bishop before the execution thereof by such parson, vicar, or other incumbent.

Consent of patron and bishop to all deeds of exchange, mortgage or purchase.

11. ' And whereas there are within divers dioceses certain exempt jurisdictions, called Peculiars, belonging to the archbishops and bishops of other dioceses,

1815.

Powers execut-
ed by arch-
bishops and
bishops having
peculiars.

Power to owners
to convey on
exchange or
sale.

Premises ex-
changed settled
to same uses.

Application of
purchase monies
of premises sold.

‘ ceses, and it is expedient that all the powers and authorities given by this act
‘ to the bishop of the diocese should as to such peculiars be given to the arch-
‘ bishop or bishop to whom the same respectively belong ;’ Be it therefore
further enacted, That all and every the powers and authorities given by this
act to the bishop of any diocese shall with respect to the several peculiars
locally situated within such diocese, be vested in and exercised by the archbishop
or bishop to whom such peculiar shall respectively belong, and not by the
bishop within whose diocese such peculiar shall be locally situated, but that
within all and every peculiar and peculiars belonging to any other person or
corporation than archbishops or bishops, such powers and authorities shall be
vested in and exercised by the bishop of the diocese within which such peculiars
shall be locally situated.

12. And be it further enacted, That from and after the passing of this act,
it shall and may be lawful to and for any owner or owners of any messuages,
buildings, lands or hereditaments, whether such owner or owners shall be a
corporation sole or aggregate, or tenant or tenants in fee simple, or in fee tail
general or special, or for life or lives, and for the guardians, trustees, or
executors, for charitable or other uses, husbands or committees of or acting for any
such owner or owners as aforesaid, who at the time of making any exchange
or purchase authorised by this act shall be respectively infants, femmes covert,
or lunatics, or under any other legal disability, or otherwise disabled to act for
themselves, himself or herself, by deed or deeds indented, and to be registered
as hereinafter is mentioned ; and with such consent, and to be signified as
hereinbefore is mentioned, of such incumbent, and of the patron and bishop,
to grant and convey to any parson, vicar or other incumbent for the time being
of any ecclesiastical benefice, perpetual curacy or parochial chapelry, any mes-
suage, out-buildings, yards, gardens and lands, with their appurtenances, or
any messuage or out-buildings only, or any lands (with or without necessary
out-buildings) only of such owner or owners, in lieu of and in exchange for
any parsonage house, out-buildings, yards, gardens and glebe lands, and pas-
tures, feedings and rights of common, or any of them, or any part thereof, of
or belonging to any such benefice, perpetual curacy or parochial chapelry, or
(in cases of purchase), to sell and convey to such parson, vicar or other incum-
bent, any lands, not exceeding in the whole twenty statute acres, with the
necessary out-buildings thereon, for such sum or sums of money as shall be certi-
fied to be the true and just value of the same at the time of such sale thereof, by
a valuation to be made as hereinafter is directed ; and which said parsonage
house, out-buildings and glebe lands so to be granted and conveyed in exchange
by any parson, vicar or other incumbent (with such consent and in such man-
ner as aforesaid), shall for ever, from and after such grant or conveyance
thereof, be and become vested in and settled upon the same person or persons,
and to, for and under the same uses, estates, trusts and limitations, and subject
to the same powers, conditions, charges and incumbrances as the said messuage,
out-buildings, lands and premises so to be granted and conveyed in exchange
were vested in, settled upon and subject to before such exchange thereof, or
would have been vested in, settled upon and subject to in case such exchange
had not been made ; and which said sum or sums of money to be received for
the purchase of any lands or hereditaments shall in all cases where the lands or
hereditaments so to be purchased belong to any corporation sole or aggregate,
infant, feme covert, lunatic, or person or persons under any other disability or
incapacity, with all convenient speed be paid into the bank of England, in the
name and with the privity of the Accountant-General of the high court of
Chancery, to be placed to his account *ex parte* the person or persons or cor-
poration, who would have been entitled to the rents, issues and profits of such
lands or hereditaments, to the intent that such money shall be applied or laid
out under the direction, and with the approbation of the said court (to be sig-
nified by an order made upon a petition to be preferred by or on behalf of the
person or persons who would have been entitled to the rents, issues and profits
of such lands or hereditaments), in the purchase of the land tax, or towards
the payment of any debts or incumbrances affecting the same lands or heredi-
taments,

1815.

taments, or other lands or hereditaments standing settled to the same or the like uses, or in the purchase of other lands or hereditaments to be conveyed, settled and made subject to and for and upon such and the like uses, trusts, limitations and dispositions, and in the same manner as the lands or hereditaments so purchased as aforesaid stood settled or limited, or such of them as at the time of making such purchase and conveyance shall be existing, undetermined and capable of taking effect; and in the mean time and until such purchase shall be made, the said money shall, by order of the said court of Chancery upon application thereto, be invested by the said Accountant-General in his name, in some one of the public funds of this kingdom, and the dividends and annual produce thereof shall from time to time be paid by order of the said court to the person or persons who would have been entitled to the rents, issues and profits of the said lands or hereditaments, in case no purchase and conveyance thereof had been made under the provisions of this act.

13. Provided always, and be it further enacted, That nothing herein contained shall extend, or be construed to extend, to enable any corporation aggregate or sole, or tenant in fee tail general or special, or for life or lives, or the guardians, trustees, or feoffees for charitable or other uses, husbands or committees, of or acting for any such owner or owners as aforesaid, who at the time of making any sale authorized by this act, shall be respectively infants, femmes covert or lunatics, or under any other legal disability, or otherwise disabled to act for themselves, himself or herself, to sell or convey (except by way of exchange, as in manner by this act directed) any lands or grounds whatsoever, for any of the purposes of this act, exceeding the quantity of five statute acres.

Persons incapacitated not to convey (except in exchange) more than five acres.

14. Provided also, That in all cases where any exchange or purchase shall be made under the authority of this act, six calendar months previous notice, describing the particulars, extent and situation of the premises respectively to be given and taken in exchange or purchased, shall be given of the intention to make such exchange or purchase, by the insertion of the same notice for three successive weeks in some one and the same newspaper of and in general circulation in each county wherein the premises so to be given and taken in exchange or purchase, or any part thereof, are situate; and also by affixing such notice in writing on a conspicuous part of the door of the church or chapel of each parish or chapelry wherein such premises or any part thereof are situate, on three Sundays successively whereon divine service shall be performed, and shortly before the commencement of such service on each Sunday in such church or chapel.

Where exchange or purchase made, notice previously given.

15. And be it further enacted, That whenever any exchange or purchase is intended to be made under the authority of this act, a map or maps under an actual survey, on oath (which oath any justice of the peace is hereby authorized to administer) by some competent surveyor to be approved of by the patron, bishop and incumbent, shall in cases of exchange be made and taken of the whole of the said glebe lands, or of such part or parts thereof as will sufficiently enable the bishop to judge of the convenience and expediency of the proposed exchange, and also of the glebe or parsonage-house, buildings and premises, any part of which it is proposed to exchange, as well as of the other lands, house, buildings and premises, proposed to be taken in exchange; and shall in cases of purchases be made and taken of the whole of the lands or hereditaments so to be purchased; and in cases of exchange the same surveyor shall in like manner make a valuation on oath (to be administered as aforesaid) of the said glebe-lands and glebe or parsonage house, buildings and premises, and also of the lands, house, buildings and premises intended to be taken in exchange, and in cases of purchase the same surveyor shall in like manner make a valuation on oath of the lands or hereditaments so intended to be purchased; and every such valuation shall include and distinctly specify the value of all timber and other trees growing thereon, and of the rights of common, and of all mines, minerals, and quarries (if any), and of all other rights, profits, and advantages whatsoever (if any) to the said premises or either of them, or any part or parcel of the same, respectively belonging.

Map and valuation on actual survey made of premises given and taken in exchange or purchase.

16. Provided also, and be it further enacted, That in all cases, as well of exchange as of purchase under this act, the bishop, on receiving such map or maps

Bishop to issue a commission of inquiry.

1815.

maps and valuation shall, if he shall in the first instance so far approve of the said exchange or purchase, issue a commission of inquiry under his hand and seal, directed to such persons as he shall think proper, not being fewer than six in number, and of whom three at the least shall be beneficed clergymen actually resident in the neighbourhood of the benefice, perpetual curacy or parochial chapelry, whereto it shall be proposed to annex any buildings or lands by exchange or purchase under the authority of this act, and of whom one shall be a barrister at law of three years standing at the least, to be named by the senior judge in the last preceding commission of *Nisi Prius* for the county in which the said benefice, perpetual curacy or parochial chapelry, shall be situate, and the return to which commission of inquiry shall be made and signed by a majority of the persons therein named, after an actual inspection by them of all the premises, with such map and valuation before them, and not otherwise; and three at least of the persons making and signing the same shall be either three such beneficed clergymen actually resident as aforesaid, or two at least of such beneficed clergymen resident as aforesaid, together with such barrister as aforesaid; and in no case whatever shall any exchange or purchase be effected under the authority of this act, unless such commission shall have been previously issued and returned, and unless the return to such commission so made and signed as aforesaid, shall certify that, after an actual inspection and examination of the premises, such exchange or purchase, in the judgment of the persons making the said return, is fit and proper to be made, and will promote the permanent advantage or convenience of the incumbent of such benefice, perpetual curacy or parochial chapelry, and his successors in the same.

Consent for patrons in case of minority, lunacy or marriage.

17. And be it further enacted, That whenever the patron of any benefice, perpetual curacy or parochial chapelry, to which the provisions of this act extend, shall happen to be a minor, idiot, lunatic or feme covert, it shall and may be lawful for the guardian, committee or husband of every such patron to transact the several matters, and execute the requisite deeds as aforesaid, for such patron, who shall be bound thereby in such manner as if he or she had been of full age or sound mind, or feme sole, and had done such acts and executed such deeds.

Consent where livings belong to the crown, or to duchy of Lancaster.

18. Provided also, and be it further enacted, That in all cases where the patronage of any benefice, perpetual curacy or parochial chapelry, to which the provisions of this act extend, shall be in the crown, and such living or benefice shall be above the yearly value of twenty pounds in the king's books, the consent of the crown to the several proceedings hereby authorized respecting such benefice, perpetual curacy or parochial chapelry, shall be signified by the execution of the deeds or instruments hereinbefore directed, by the Lord High Treasurer, or First Lord Commissioner of the Treasury, for the time being; but if such benefice, perpetual curacy or parochial chapelry, shall not exceed the yearly value of twenty pounds in the king's books, such consent shall be signified by such execution by the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being; and if such benefice, perpetual curacy or parochial chapelry, shall be within the patronage of the crown, in right of the duchy of Lancaster, then such consent shall be signified by the execution of such deeds or instruments by the Chancellor of the said duchy for the time being.

Deeds and instruments deposited in archbishop's or bishop's registry.

19. And be it further enacted, That one part of all deeds and instruments to be made and executed in pursuance of or for carrying into execution this act, together with the maps and valuations, and the commissions of inquiry and the returns to the same, hereinbefore directed, shall, within twelve calendar months next after the date or dates thereof, be deposited in the office of the registrar of the diocese wherein such benefice, perpetual curacy or parochial chapelry, shall be locally situate, to be perpetually kept and preserved therein, except as to those benefices which are under the peculiar jurisdiction of any archbishop or bishop, in which case the several documents before mentioned shall be deposited in the office of the registrar of that peculiar jurisdiction, to which any such benefice, perpetual curacy or parochial chapelry shall be subject, and such

registrars

registrars shall respectively so deposit and preserve the same, and shall give and sign a certificate of such deposit thereof to be written on duplicate, or on any other part or parts of the said deeds, or any or either of them, or on some other separate parchment, paper or instrument; and every such deed or instrument shall be produced at all proper and usual hours at such registry, to every person applying to inspect the same, and an office copy of each such deed or instrument, certified under the hand of the registrar (and which office copy, so certified, the registrar shall in all cases grant to every person who shall apply for the same) shall in all cases be admitted and allowed as legal evidence thereof in all courts whatsoever; and every such registrar shall be entitled to the sum of ten shillings and no more (over and beside the stamp duty, if any) for such commission and the previous requisites thereof; and the sum of five shillings and no more for so depositing as aforesaid the deeds, settlements, map, survey, valuation, commission and instruments, and so as aforesaid certifying such deposit thereof; and the sum of one shilling and no more for each such search; and the sum of sixpence and no more (over and besides the said stamp duty) for each folio of seventy-two words of each such office copy, so certified as aforesaid.

Fees of registrar.

20. And be it further enacted, That such of the forms contained in the schedules of the said recited acts of the seventeenth and twenty-first years of the reign of his present Majesty, as are applicable to the provisions of this act, and with such variations thereof as shall render them so applicable, shall be used and applied to the purposes of this act as fully and effectually as if the same were hereby enacted and made part of this act.

In what case forms in sched.
17 Geo. 3. c. 53.
31 Geo. 3. c. 66.
used for act.

21. Provided also, and it is hereby declared, That nothing in this act contained shall extend or be construed to repeal or abridge any law now in force, enabling any person or corporation sole or aggregate, to augment or improve any ecclesiastical benefice, perpetual curacy or parochial chapelry.

Act not to repeal any former law.

56 Geo. 3. c. 52.

1816.

An Act to amend and render more effectual an Act passed in the last Session of Parliament, for enabling Spiritual Persons to exchange their Parsonage-House or Glebe Lands, and for other Purposes therein mentioned.—[20th June, 1816.]

WHEREAS an act was passed in the last session of parliament, intituled, “An Act for enabling Spiritual Persons to exchange their Parsonage- or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater value or more conveniently situated for their Residence and Occupation, and for annexing such Houses and Lands so taken in Exchange to such Benefices as Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Land to become Glebe in certain cases; and for other purposes:” And whereas it is expedient to authorize the incumbents of benefices, perpetual curacies and parochial chapelries, to apply the monies arising from the sale of any timber cut from the glebe or other lands of their respective benefice, perpetual curacies or parochial chapelries, towards the purposes of the said recited act: May it therefore please your Majesty that it may be enacted; and be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the incumbent of any benefice, perpetual curacy or parochial chapelry, with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, or of the archbishop or bishop to whom the peculiars wherein such benefice, perpetual curacy or parochial chapelry is situate shall belong, (such consent to be signified in manner as in the said recited act is mentioned,) to pay and apply the monies to arise by sale of any timber cut and sold from the glebe lands of such benefice, perpetual curacy or parochial chapelry, or from any other land, whether copyhold, holden under any manor of such benefice, perpetual curacy or parochial chapelry, or otherwise, the timber whereof be-
longs

55 G. 3. c. 147.

Incumbent with consent of patron and bishop may apply money arising from sale of timber for or towards exchange or purchase of parsonage house or glebe lands.

1816.

longs to such benefice, perpetual curacy or parochial chapelry, either for equality of exchange, or towards and in part of equality of exchange, or for the price or purchase money, or towards and in part of the price or purchase money of any house, outbuildings, yards, gardens, and appurtenances, or any lands, or any or either of them, by the said recited act authorized to be taken in exchange or to be purchased, and from and after such exchange or purchase to be annexed to and to be and become the parsonage and glebe house and glebe lands and premises of such benefice, perpetual curacy or parochial chapelry, as in the said recited act is mentioned.

55 G. 3. c. 147.
sec. 16.

2. ' And whereas it is by the said recited act enacted, That the bishop shall ' in cases of exchange and purchase under the said act issue a commission of ' inquiry for the purposes therein mentioned, to be directed to such persons as ' are therein described, and of whom one shall be a barrister of three years ' standing at the least, to be named by the senior judge of the Nisi Prius for ' the county in which the benefice, perpetual curacy or parochial chapelry, ' whereto it shall be proposed to annex any building or land by exchange or ' purchase under the said act shall be situate: but inasmuch as the no- ' mination of such barrister by a judge of Nisi Prius is not applicable to the ' county palatine of Chester nor to the principality of Wales: ' Be it there- fore enacted, That where any exchange or purchase shall be made or proposed to be made under the authority of the said act in any benefice, perpetual curacy or parochial chapelry, situate within the said county palatine of Chester, or within the said principality of Wales, such barrister shall be named by the chief justice for the time being of the said county palatine of Chester or by the justice, or, in case of his absence, the other justice of the great sessions for those counties within the said principality of Wales, within which said county palatine or respective counties of the said principality of Wales the said bene- fice, perpetual curacy or parochial chapelry, shall be situate.

Barrister direct-
ed by recited act
to be named by
justices of Nisi
Prius, to be
named in Ches-
ter and Wales
by the chief
justice, &c.
there.

1817.

57 Geo. 3. c. 99.

An Act to consolidate and amend the Laws relating to Spiritual Persons holding Farms; and for enforcing the Residence of Spiritual Persons on their Benefices; and for the Support and Maintenance of Stipendiary Curates in England.—[10th July, 1817.]

- 21 H. 8. c. 13. ' **W**HEREAS an act was passed in the twenty-first year of the reign of his
' Majesty King Henry the Eighth, intituled, " An Act against Plurali-
' ties of Benefices, taking of Farms by Spiritual Men, and for Residence : " '
28 H. 8. c. 13. ' And whereas another act was passed in the twenty-eighth year of the reign of his
' said Majesty King Henry the Eighth, intituled, " An Act for compelling Spiritual
' Persons to keep Residence upon their Benefices : " And whereas another act
13 Eliz. c. 20. ' was passed in the thirteenth year of the reign of her Majesty Queen Elizabeth,
' intituled, " An Act touching Leases of Benefice, and Ecclesiastical Livings
14 Eliz. c. 11. ' with Cure : " And whereas three several acts were passed in the fourteenth,
18 Eliz. c. 11. ' eighteenth, and forty-third years respectively of the reign of her said Majesty
43 Eliz. c. 9. ' Queen Elizabeth, for explaining and amending the said recited act of the
' thirteenth year aforesaid; and which were made perpetual by an act passed in
3 Car. 1. c. 4. ' third year of the reign of his Majesty King Charles the First, intituled, " An
' Act for the Continuance and Repeal of divers Statutes : " And whereas ano-
43 G. 3. c. 84. ' ther act was passed in the forty-third year of the reign of his present Majesty,
' intituled, " An Act to amend the Laws relating to Spiritual Persons holding
' of Farms, and for enforcing the Residence of Spiritual Persons on their Bene-
43 G. 3. c. 109. ' fices in England : " And whereas another act was passed in the forty-third year
' of reign of his present Majesty, intituled " An Act to rectify a Mistake in an
' Act made in this present Session of Parliament, intituled, ' An Act to amend the
' Laws relating to Spiritual Persons holding of Farms, and for enforcing the Re-
' sidence of Spiritual Persons on their Benefices in England, and to remove a
2 Ann. st. 2. ' Doubt respecting the Title of the Statute of the Twenty-first year of King
. 12. ' Henry the Eighth therein mentioned : " And whereas an act was passed in the
' twelfth

1817.

‘ twelfth year of the reign of her late Majesty Queen Anne, intituled, “ An
 ‘ Act for the better Maintenance of the Curates within the Church of England,
 ‘ and for preventing any Ecclesiastical Persons from buying the next Avoidance
 ‘ of any Church preferment :” And whereas an act was passed in the thirty-
 ‘ sixth year of the reign of his present Majesty, intituled, “ An Act for the
 ‘ further Support and Maintenance of Curates within the Church of England,
 ‘ and for making certain Regulations respecting the Appointment of such
 ‘ Curates, and the Admission of Persons to Cures augmented by Queen Anne’s
 ‘ Bounty, with respect to the Avoidance of other Benefices :” And whereas ano-
 ‘ ther act was passed in the fifty-third year of the reign of his present Majesty,
 ‘ intituled, “ An Act for the further Support and Maintenance of Stipendiary
 ‘ Curates :” And whereas doubts have arisen upon the construction of some of
 ‘ the provisions of the said acts : and it is therefore necessary that such provi-
 ‘ sions of the said acts should be explained, and other provisions made, and
 ‘ that the several laws relating to spiritual persons holding farms, and to buy-
 ‘ ing and selling, and for enforcing of residence and the maintenance of stipen-
 ‘ diary curates, should be consolidated into one act :’ May it therefore please
 your Majesty that it may be enacted, and be it enacted by the King’s most
 excellent Majesty, by and with the advice and consent of the Lords spiritual
 and temporal, and Commons, in this present parliament assembled, and by the
 authority of the same, That from and after the passing of this act, so much of
 the said several recited acts passed in the reign of His Majesty King Henry
 the Eighth, and so much of the said acts of the reign of her Majesty Queen
 Elizabeth, and of the said recited act of his Majesty King Charles the First,
 as relates to spiritual persons holding of farms, and to leases of benefices and
 livings, and to buying and selling, and to residence of spiritual persons on their
 benefices ; and also so much of the said recited Act of her Majesty Queen
 Anne, and of the said recited act of the thirty-sixth year of the reign of his
 present Majesty, as relates to the maintenance of curates within the Church of
 England, and making provision for appointing stipends for such curates, and
 all the said several other recited acts passed in the reign of his present Majesty,
 shall be and the same are respectively hereby repealed.

36 G. 3. c. 83.

53 G. 3. c. 149.

Recited Acts re-
pealed.

2. And be it further enacted, That from and after the passing of this act, it
 shall not be lawful for any spiritual person, having or holding any dignity,
 prebend, canonry, benefice, or any stipendiary curacy or lectureship, to take to
 farm, for occupation by himself, by lease, grant, words, or otherwise, for term
 of life or term of years, or at will, any lands, exceeding in amount in the whole
 eighty acres, for the purpose of occupying or using or cultivating the same,
 without the consent in writing of the bishop of the diocese in which such dig-
 nity, canonry, prebend, benefice, stipendiary curacy, or lectureship shall be
 locally situate, specially given for that purpose ; and every such permission to
 any spiritual person to take to farm, for the purpose of occupying the same,
 any greater quantity of land than eighty acres, shall specify the number of
 years, not exceeding seven, for which the permission is given ; and every such
 spiritual person as aforesaid, who shall, without such permission as aforesaid,
 take to farm any greater quantity of land than eighty acres, shall forfeit for
 every acre of land above the quantity of eighty acres so taken to farm, the sum
 of forty shillings for each and every year during or in which he shall so oc-
 cupy, use, cultivate, or farm such land contrary to the provisions of this act,
 to be recovered by and to the use of any person who may inform and sue for
 the same.

Spiritual persons
not to take to
farm for occupa-
tion above
eighty acres,
without consent
of the bishop,
under penalty of
40s. per acre.

3. And be it further enacted, That no spiritual person having or holding
 any dignity, prebend, canonry, benefice, stipendiary curacy, or lectureship,
 shall by himself, or by any other for him or to his use, engage in or carry on
 any trade or dealing for gain or profit, or deal in any goods, wares, or mer-
 chandize, by buying and selling for lucre, gain, or profit, in any market, fair,
 or other place, upon pain of forfeiting the value of the goods, wares, and mer-
 chandizes, by him, or by any to his use, bargained and bought to sell again
 contrary to the provisions of this act ; and that every bargain and contract so
 made

No spiritual
person bene-
ficed, or per-
forming ecclesi-
astical duty,
shall engage in
trade, or buy to
sell again for
profit or gain.

1817.

Not to extend to spiritual persons engaged in keeping schools, or as tutors, &c. in respect of any thing done, or any buying or selling in such employment; or to selling any thing *bonâ fide* bought for the use of the family; or occupying any glebe, &c.

Penalty for non-residence.

Where no house belonging to the benefice, &c. residence within the limits of parish, &c. deemed legal residence.

made by him, or by any to his use, in any such trade or dealing, contrary to this act, shall be utterly void and of none effect; and the one half of every such forfeiture shall go to his Majesty, and the other half to him that will sue for the same.

4. And be it further enacted, That nothing in this act contained in relation to being engaged in trade or dealing, or buying or selling, shall extend or be construed to extend to, or to subject to any penalty, or forfeiture, any spiritual person for keeping a school or seminary, or acting as a schoolmaster, or tutor, or instructor, or being in any manner concerned or engaged in giving instruction or education for profit or reward, or for buying or selling, or doing any other act, matter, or thing in the conduct of, or carrying on, or in relation to the management of any such school, seminary, or employment; or to any spiritual person whatever, for the buying of any goods, wares, or merchandizes, or articles or things of any description, which shall, without fraud or covin, be bought, to the intent and purpose, at the buying thereof, to be used and employed by the spiritual person buying the same for his family or in his household, and after the buying of any such goods, wares, or merchandizes, or articles or things, the selling the same again, or any parts thereof, which such person may not want or choose to keep, although the same shall be sold at any advanced price beyond that which may have been given for the same; or for any buying or selling again for any lucre, gain, or profit of any manner of cattle or corn, or other matters or things whatever, necessary, proper, or convenient to be bought, sold, kept, or maintained by any spiritual person, or any other person for him, or to his use, for the occupation, manuring, improving, pasturage, or profit of any glebe, demesne, farms, lands, tenements, or hereditaments, which may be lawfully held and occupied, possessed, or enjoyed by such spiritual person, or any other for him or to his use: provided always, that nothing herein contained shall extend or be construed to extend to authorize any such spiritual person to sell any cattle or corn, or other matters or things as aforesaid, in person, in any market, fair, or place of public sale.

5. And be it further enacted, That from and after the passing of this act every spiritual person holding any benefice, who shall, without any such license or exemption as is in this act allowed for that purpose, wilfully absent himself therefrom for any period exceeding the space of three months together, or to be accounted at several times in any one year, and make his residence and abiding at any other place or places except at some other benefice, donative, perpetual curacy, or parochial chapelry of which he may be possessed, shall, when such absence shall exceed such period as aforesaid, and not exceed six months, forfeit and pay one third of the annual value (deducting therefrom all outgoings, except any stipend paid to any curate) of the benefice, donative, perpetual curacy, or parochial chapelry from which he shall so absent himself as aforesaid; and when such absence shall exceed six months, and not exceed eight months, one-half of such annual value; and when such absence shall exceed eight months, two-thirds of such annual value: and when such absence shall have been for the whole of the year, three-fourths of such annual value, to be recovered by action of debt, bill, plaint, or information in any of His Majesty's courts of Record at Westminster, or the courts of Great Sessions in Wales, wherein no essoign, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; and the whole of every such penalty or forfeiture shall go and be paid to the person or persons who shall inform and sue for the same, together with such costs of suit as shall be allowed, according to the practice of the court in which such action shall be brought.

6. And be it further enacted, That every spiritual person having any benefice, and who shall not have any house of residence thereon, and who shall have resided nine months in the year within the limits of his benefice, or within the limits of the city, town, place, or parish in which his benefice may be situated, provided such last-mentioned residence be within the distance of two miles from the church or chapel of his benefice, shall not be liable to any penalties on account of non-residence, nor be obliged to take out any license

in

1817.

in respect thereof, but that the same shall be deemed a legal residence to all the intents and purposes of this act; and in all returns made by the bishops, persons so residing shall be returned as resident.

7. And whereas the governors of Queen Anne's bounty have in some instances purchased, and may hereafter purchase houses not situate within the parishes for which they are purchased, but so contiguous as to be sufficiently convenient and suitable for the residence of the officiating ministers thereof; be it therefore enacted, That such houses, having been previously approved by the bishop by writing under his hand and seal, and duly registered in the registry of the diocese, shall be deemed houses of residence appertaining to such benefices to all intents and purposes whatsoever.

Houses purchased by governors of Queen Anne's bounty to be deemed residences.

8. And be it further enacted, That in all cases of rectories having vicarages endowed, the residence of the vicar in the rectory house shall be deemed a legal residence to all intents and purposes whatever; provided that the vicarage house be kept in proper repair, to the satisfaction of the bishop.

Rectories having vicarages endowed.

9. And be it further enacted, That it shall be lawful for the bishop, in every case in which there shall not be a house of residence belonging to any benefice within his diocese, to allow and adjudge any fit house within the limits of such benefice, and belonging thereto, or any fit house belonging thereto not within the limits, but so contiguous as to be sufficiently convenient for the purpose, to be the house of residence thereof; and such allowance and adjudication in writing under the hand and seal of such bishop, shall thereupon be registered in the registry of the diocese from time to time; and such house shall thenceforth be deemed the house of residence for the time being to all intents and purposes whatsoever.

Power in the bishop to allow any fit house belonging to the preferment, to be a house of residence.

10. And be it further enacted, That no spiritual person, being chancellor, vice-chancellor, or commissary of either of the universities of Oxford or Cambridge, or being warden, dean, provost, president, rector, principal, master, or other head ruler of any college or hall within the said Universities, and no spiritual person having or holding any professorship, or any public readership in either of the said Universities, being actually resident within the precincts of the University, and reading lectures therein; and no scholar under the age of thirty years, abiding for study without fraud at either of the said Universities; and no chaplain of the King's or Queen's most excellent Majesty, or of any of the King's or Queen's children, brethren, or sisters, during so long as he shall actually attend in the discharge of his duty as such chaplain in the household to which he shall belong; and no chaplain of any archbishop or bishop, or of any temporal lord of parliament, or of any other person or persons authorised by law to appoint any chaplain or chaplains, during so long as such chaplain or chaplains shall abide and dwell and daily attend in the actual performance of his duty as such chaplain in the household to which he shall so belong; and no spiritual person actually serving as a chaplain of the House of Commons, or as clerk of his Majesty's closet, or as a deputy clerk thereof, or a clerk of the closet of the heir apparent, or as a deputy clerk thereof, or as a chaplain general of his Majesty's forces by sea or land, or chaplain of his Majesty's dock yards, while such spiritual person shall be actually attending and performing the duties of such office respectively; or as a chaplain in the household of any British ambassador residing abroad, during the time of his performing the duties of such his office; or as chancellor or vicar general, or as commissary, whilst exercising the duties of their offices respectively; or as an archdeacon while upon visitations, or otherwise engaged in the exercise of his functions; and no spiritual person being a minor canon, or vicar choral, or priest vicar, or any such other public officer, in any cathedral or collegiate church, during the times for which such spiritual person shall actually reside within the precincts of the cathedral or collegiate church to which he shall belong, or within the city or town in which the said cathedral or collegiate church is situate, or the suburbs thereof, and shall actually perform the duties of his office; or as a dean or sub-dean, or priest or reader in any of his Majesty's royal chapels at St. James's or Whitehall, or as a reader in his Majesty's private chapels at Windsor or elsewhere, whilst residing and actually performing

Certain persons exempted from penalties for non-residence.

ing

1817.



ing the duty of any such office respectively; or as a preacher in any of the inns of court, or at the rolls; or as bursar, treasurer, dean, vice-president, sub-dean, or public tutor or chaplain, or other such public officer, in any college or hall in either of the Universities of Oxford or Cambridge, during the period for which he may respectively be required, by reason of any such office, to reside and perform the duties of any such office, and actually shall reside and perform the duties of the same; or as public librarian or public registrar or proctor, or public orator, or other such public officer, in either of the said Universities, during the period for which he may respectively be required by reason thereof to reside and perform the duties of any such office, and actually shall reside and perform the duties of the same; or as Fellow of any college in either of the Universities, during the time for which he may be required to reside by any charter or statute, and shall actually reside therein; or as warden, provost, or fellow of Eton or Winchester college, or the master of the Charter house, during the time for which he may be required so to reside, and shall actually reside therein respectively; or within the city or town or suburbs of the city or town within or near to which the said Colleges are respectively situate; or as a master or usher in the said colleges of Eton or Winchester, or as a master or usher of Westminster school, or as principal or professor of the East India college; or who shall be specially exempt from residence under the provisions of any act or acts of parliament not repealed by this act, shall be liable to any of the pains, penalties, or forfeitures in this act contained, for or on account of any non-residence, during any such period as aforesaid, on any benefice; but every such spiritual person shall, with respect to residence under this act, be entitled to account such period as if he had legally resided on some other benefice; any thing in this act contained to the contrary notwithstanding.

Dignitaries residing at cathedral churches for certain periods exempted.

Provision for cases in which the year of residence at cathedrals commences at any other period than the 1st of January.

11. And be it further enacted, That it shall be lawful for any spiritual person being dean, during such time as he shall reside upon his deanery, or being prebendary or canon, or holding any other dignity or dignities in any cathedral or collegiate church or churches, who shall reside any period not exceeding four months altogether within the year upon such dignity or dignities, to account such residence as if he had legally resided on some benefice: Provided always, that it shall be lawful for any spiritual person having or holding any prebend, canonry, or dignity in any cathedral or collegiate church, in which the year for the purposes of residence is accounted to commence at any other period than the first of January, and who may keep the periods of residence required for two successive years at such cathedral or collegiate church, in whole or in part, between the first of January and the thirty-first of December in any one year, to account such residence, although exceeding four months in the year, as reckoned from the first of January to the thirty-first of December, as if he had legally resided on some benefice; any thing in this act contained to the contrary notwithstanding.

Bishop may license for a longer period, if the duties of a cathedral require it.

12. And be it further enacted, That it shall be lawful for the bishop of the diocese in which any benefice shall be locally situate to license any longer period of non-residence upon any such benefice of any prebendary, canon, or other person holding any dignity in any cathedral or collegiate church, in any case in which it shall appear to such bishop, from his own knowledge, if such cathedral or collegiate church is locally situate within his own diocese, or if not, by the certificate of the bishop of the diocese in which the cathedral or collegiate church shall be locally situate, to be required for the performance of any duties in any such cathedral or collegiate church; provided that every such spiritual person shall during such period reside on such prebend, canonry, or dignity.

Proviso for prebendaries, &c. appointed before this act.

13. Provided always, and be it further enacted, That no spiritual person appointed to any prebend, canonry, or dignity in any cathedral or collegiate church before the passing of this act, shall be subject to any penalty or forfeiture for non-residence upon any benefice during the period of his actually residing upon such prebend, canonry, or dignity.

14. And be it further enacted, That every spiritual person having any house of

of residence upon his benefice, who shall not reside thereon, shall, during such period or periods of non-residence, whether the same shall be for the whole or part of any year, keep such house of residence in good and sufficient repair; and that every such spiritual person who shall not keep such house of residence in repair, and who shall not, upon monition issued by the bishop of the diocese in which the same shall be locally situate, put the same in repair, according to the requisition of such monition, within the time specified therein, to the satisfaction of the bishop of the diocese, and to be certified to the bishop upon such survey and report as shall be required by the bishop in that behalf, shall be liable to all penalties for non-residence, notwithstanding any exemption or license, during the period of such house of residence remaining out of repair, and until the same shall have been put in good and sufficient repair, to the satisfaction of the bishop of the diocese.

1817.

Persons having house of residence on their benefices to forfeit the exemption, if house not kept in repair.

15. And be it further enacted, That from and after the passing of this act it shall be lawful for any bishop, upon application made for that purpose, by petition in writing, by any spiritual person, or by any fit and proper person on behalf of any spiritual person having or holding any benefice locally situated within his diocese, upon such proofs as to any facts stated in any such petition as any such bishop may think necessary, and shall require by affidavit made before any ecclesiastical judge or his surrogate, or any justice of the peace or magistrate, or any master extraordinary in chancery (which oath any such ecclesiastical judge or surrogate or justice of the peace or magistrate, or master extraordinary in chancery, is hereby authorized and required to administer,) to grant in such cases as are in this act enumerated, in which, upon due consideration of all the circumstances stated in any such application, and verified to the satisfaction of the bishop as aforesaid, such bishop shall in his discretion think it fit to grant the same, a license in writing under his hand, expressing the cause of granting the same to such spiritual person to reside out of the parish, or out of the proper house of residence of his benefice, for the purpose of exempting such person from any pecuniary penalty or forfeiture in respect of any non-residence thereon; (that is to say), to any spiritual person who shall be prevented from residing in the proper house of residence, or in the parish, by any actual illness or infirmity of body of himself, or of his wife or child, making part of and residing with him as part of his family; and also to any spiritual person having or holding any benefice whereupon or wherein there shall be no house of residence, or where the house of residence shall be unfit for the residence of such spiritual person, such unfitness not being occasioned by any negligence, default, or other misconduct of such spiritual person, and such spiritual person keeping such house of residence in repair to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, and occupying in the parish of the same respectively any mansion or messuage, to reside in such mansion or messuage, such spiritual person keeping the house of residence, and other buildings belonging thereto, in good and sufficient repair and condition, and producing to the bishop proof to his satisfaction, at the time of granting and renewing any such license, of such good and sufficient state of repair; and also to any spiritual person having or holding any benefice of small value, and serving as a licensed stipendiary curate elsewhere, and providing for the serving of such his benefice, to the satisfaction of such bishop; and also to any master or usher of any endowed school duly licensed by the bishop, and actually employed in teaching therein; and also to any master or preacher of any hospital or incorporated charitable foundation during the period for which he may be required to reside by any charter or statute of any such hospital or incorporated charitable foundation, or by any other lawful authority in the same, and shall actually reside and perform his duties therein; or to any person holding any endowed lectureship, or endowed chapelry, or endowed preachership, and performing and executing the duties thereof respectively, with the license of the bishop in whose diocese he shall so officiate; or to any spiritual person having or holding any benefice of small value, and serving as preacher in any proprietary chapel, in any city or town, with the license of the bishop in whose diocese he shall so officiate; or to any spiritual

Bishop may grant licenses for non-residences in certain cases enumerated.

1817.

Fee for licenses.

Person aggrieved may appeal to the archbishop.

Security to be given for payment of expenses.

In cases not enumerated, bishops may grant licenses, and assign salaries to curates employed.

Reasons for granting them to be transmitted to the archbishop for examination and allowance.

spiritual person actually serving as chaplain in any of his Majesty's garrisons, or as chaplain to the royal military asylum at Chelsea, or royal military college at Sandhurst, or as teacher of the royal military academy at Woolwich, or as chaplain at either of the royal hospitals at Greenwich or Chelsea, or as chaplain to either of the royal hospitals for seamen at Haslar or Plymouth, or as chaplain to the naval asylum, or in his Majesty's navy, or as chaplain of his Majesty's gaol of Newgate, or of the Penitentiary at Millbank, or as chaplain of any British factory, or as principal surrogate or official in any ecclesiastical court of any diocese, or as a librarian of the British Museum, or of Sion college, or as one of the trustees of Lord Crewe's charity, during the time of personal attendance on the duties of such office respectively: Provided always, that the spiritual person obtaining any such license shall pay to the secretary or officer of the bishop the sum of ten shillings, exclusive of and over and above the stamp duty chargeable thereon, and no more: Provided also, that if any spiritual person applying to any bishop for any such license shall think himself aggrieved by the refusal thereof, it shall be lawful for such spiritual person to appeal to the archbishop of the province, who shall forthwith, either by himself, or some commissioner or commissioners appointed from among the other bishops of his province, under his hand, make or cause to be made inquiry into the same, and by writing signed by himself, confirm such refusal, or grant a license under this act, as shall seem just and proper: Provided always, that in every such case the spiritual person so appealing shall give security to the bishop for the payment of such reasonable expenses occasioned by the appeal as the archbishop or his commissioner or commissioners shall award.

16. And be it further enacted, That it shall be lawful for any such bishop as aforesaid, in any cases not herein-before enumerated, in which under all the circumstances of any such case such bishop shall think it expedient to grant to any spiritual person possessed of any benefice a license to reside out of the parish, or out of the proper house of residence, as the case may be, or as the case may appear to such bishop to require, and to assign, in any case in which a stipendiary curate may be employed to do the duty of such spiritual person, such salary as he shall judge fit to appoint, due respect being had to the value of such benefice, and to all other circumstances of the case: And it shall also be lawful for any bishop, in case of the absence from the realm of any spiritual person, to grant any such license without any application made for that purpose, and from time to time in any such case to renew any such license as he shall think fit, and in every such case to appoint a stipendiary curate in case no curate duly licensed shall be then employed in serving such benefice, and to assign a salary to such curate; or if any curate shall have been and be then so employed, to assign any additional salary to such curate; and in every and any of such cases to cause such salaries to be paid by sequestration of the profits of the benefice: Provided always, that in every such case respectively, the nature and special circumstances thereof, and the reasons that have induced such bishop to grant such license as aforesaid, shall be forthwith transmitted to the archbishop of the province to which such bishop shall belong, who shall forthwith by himself, or by some commissioner or commissioners appointed for that purpose from among the bishops of such province, by writing under his hand, which commissioner or commissioners is and are thereupon authorized to take upon himself or themselves the execution of the said commission, examine into such case, and make such inquiries as to any particulars relating thereto, as such archbishop or commissioner or commissioners so appointed as aforesaid may think necessary; and after such inquiries made by himself, or where the same shall be made by such commissioner or commissioners, after a return of the substance thereof in writing to such archbishop, such archbishop shall thereupon allow or disallow such license in the whole or in part, or make any alteration therein as to the period for which the same may have been granted or otherwise, and likewise as to the stipend assigned to the curate, as to such archbishop shall seem fit; and no such license shall be good, valid, or effectual under this act, for any purpose whatever, unless it shall have been so allowed and approved by such archbishop, such allowance thereof being signified by the

the signing thereof by such archbishop: Provided always, that it shall not be necessary in such license to specify the cause of granting the same.

1817.

17. And be it further enacted, That no license granted under this act shall be made void by the death or removal of the bishop granting the same, but the same shall be and remain good and valid notwithstanding any such death or removal, unless the same shall be revoked by the next or any succeeding bishop, as the case may require.

Licenses not to be void by the death or removal of the grantor, unless revoked by the successor.

18. And be it further enacted, That every application made by or in behalf of any spiritual person holding any benefice, donative, perpetual curacy, or parochial chapelry, to the bishop of the diocese, for any license for non-residence, shall be in writing, and shall be signed by the person making the same, and shall state whether such spiritual person intends to perform the duty himself, and if he does, where and at what distance he intends to reside; or if he intends to employ a curate, the application shall state what salary he proposes to give to his curate, and whether the curate proposes to reside or not to reside in the parish; and if the curate intends to reside, then whether in the parsonage house; and if he does not intend to reside in the parish, then the application shall state at what distance therefrom, and at what place such curate intends to reside; and whether such curate serves any other parish as curate or incumbent, or has any ecclesiastical preferment, or holds any donative, perpetual curacy, or parochial chapelry, or officiates in any other church or chapel; and such application shall also state the gross annual value of the benefice in respect of which any license for non-residence shall be applied for; and it shall not be lawful for the bishop to grant any such license, unless the application shall contain a statement of the several particulars aforesaid; and all such applications and specifications shall be kept and filed by the registrar of the diocese in a separate book, which shall be kept and preserved for that purpose; and such book shall not be open to public inspection, or disclosed, or copies thereof made, except with the leave in writing of the bishop of the diocese.

Every application for license shall be in writing, and shall state certain particulars.

19. And be it further enacted, That during the vacancy of any see, the power of granting licenses under this act, subject to the regulations therein contained, shall be exercised by the vicar-general of the diocese; or in case such circumstances shall arise as shall disable the bishop from exercising in person the functions of his office, it shall be exercised by such person or persons as is or are lawfully empowered to exercise his general jurisdiction in the diocese.

By whom licenses may be granted while a see is vacant, or the bishop absent, &c.

20. And be it further enacted, That it shall be lawful for any bishop who shall have granted any license for non-residence as aforesaid, or for any successor or successors of any such bishop, to revoke any such license in any case in which it may appear to him or them proper and expedient to revoke the same: Provided, that any spiritual person may appeal against any such revocation by the bishop, in like manner as is herein-before directed in case of any refusal of any license: Provided also, that it shall be lawful for any archbishop to whom such appeal shall be made, to order and direct such reasonable fees and charges to be paid by any spiritual person appealing as aforesaid, in respect of any such proceedings as aforesaid, as he shall in his discretion think fit: Provided also, that no license for non-residence granted under this act shall continue in force for more than three years from the granting thereof, or after the thirty-first day of December, in the second year after the year in which such license is granted.

Licenses may be revoked.

Fees may be ordered to be paid by appellants.

Limiting the time of licenses.

21. And be it further enacted, That every bishop who shall grant or revoke any license for non-residence under this act shall and he is hereby required, within one month after the grant or revocation of such license, to cause a copy of every such license or revocation to be filed in the registry of his diocese; and an alphabetical list of such licenses and revocations shall be made out by the registrar of such diocese, and entered in a book, and kept for the inspection of all persons, upon payment of the sum of three shillings and no more; and a copy of every such license with respect to any benefice shall be transmitted by the spiritual person to whom the license is granted, to the churchwardens of the parish, township, or place to which the same relates, within one month

Copies of licenses or revocations to be filed in the registry of the diocese, and a list kept for inspection; and copies transmitted to churchwardens,

1817.

and publicly
read at the first
visitation.

A list of licenses
allowed by the
archbishop, or
granted in his
own diocese,
shall be annually
transmitted to
his Majesty in
council, who
may revoke li-
censes, &c.

License, al-
though re-
voked, shall be
deemed valid
between the
grant and revo-
cation.

On or before
25th March
annually a re-
turn shall be
made to his Ma-
jesty in council
of every bene-
fice, with names
of residents and
non-residents,
&c.

after the grant of such license ; and every bishop revoking any license shall cause such revocation to be transmitted to the churchwardens of the parish, town-ship, or place to which it relates, which copies shall be by them deposited in the parish chest ; and every registrar who shall neglect to enter the same shall forfeit for every neglect of entering any such license or revocation in any such list the sum of five pounds, to be recovered by and for the use of any person who shall sue for the same, in like manner as any penalty may be recovered under the provisions of this act ; and a copy of every such license or revocation shall likewise be produced by the churchwarden, and publicly read by the registrar or other officer at the visitation of the ecclesiastical district within which the benefice in respect whereof the license shall have been granted, or revocation made, shall be locally situate, immediately next succeeding the granting or revocation thereof.

22. And be it further enacted, That every archbishop who shall in his own diocese grant any license, or who shall allow or approve, in manner directed by this act, any license or licenses in any case or cases not enumerated in this act, shall annually, on or before the thirty-first day of January in each year, transmit to his Majesty in council a list of all such licenses so granted or allowed or approved respectively as aforesaid in the year ending on the last day of December preceding such thirty-first day of January, and shall in every such list specify the reasons which have induced him to grant, allow, or approve the said licenses, together with the reasons transmitted to him by the bishops for granting any such licenses in their respective dioceses ; and it shall be lawful for his Majesty in council, by an order made for that purpose, to revoke and annul any such license ; and if his Majesty in council shall think fit so to do, such order shall be transmitted to the archbishop who shall have granted or allowed or approved such license, who shall thereupon cause a copy of every such order, made in relation to any license so allowed or approved, to be transmitted to the bishop of the diocese in which such license shall have been granted ; and such bishop shall cause a copy of the mandatory part of the order to be filed in the registry of such diocese, and a like copy to be delivered to the churchwardens of the parish to which the same relates, in manner herein-before directed as to revocations of licenses under this act ; and every such archbishop shall cause a copy of the mandatory part of every such order, made in relation to any such license as aforesaid granted by him in his own diocese, to be in like manner filed in the registry of his diocese, and a like copy also to be delivered to the churchwarden of the parish to which such license shall relate, in manner before mentioned : Provided always, that after such license shall have been so revoked by his Majesty in council, the same shall nevertheless, in all questions that shall have arisen or may thereafter arise touching the non-residence of the spiritual person to whom the same shall have been granted, between the period at which the same was granted or allowed or approved, and the time at which the same shall be so revoked as aforesaid, be deemed and taken to be and to have been valid and effectual to all the intents and purposes of this act.

23. And be it further enacted, That on or before the twenty-fifth day of March in every year a return or returns shall be made to his Majesty in council, by every bishop, of the names of every benefice within his diocese, or subject to his jurisdiction by virtue of this act, and the names of the several spiritual persons holding the same respectively who shall have resided, and also the names of the several spiritual persons respectively who shall not have resided thereon by reason of any exemption under or by virtue of this act, or by reason of any license granted by such bishop for any and what cause enumerated by this act, and also of all spiritual persons not having any such exemption or license, who shall not have resided on their respective benefices, so far as the bishop is informed thereof ; and also the names of all curates licensed to serve any benefice on which the incumbent is not resident, and whether the gross annual value of such benefice amounts to or exceeds three hundred pounds *per annum* or not, the amount of the curate's salary, and the place of his residence ; and every spiritual person who shall be non-resident in

1817.

in any year subsequent to the passing of this act, by reason of residence on any other benefice, or of any exemption under this act, and to entitle him to which it is not necessary to obtain any license under this act, shall, within six weeks from and after the first day of January in every following year, notify the same in writing under his hand to the bishop of the diocese to whose jurisdiction he is subject by this act, or otherwise, in respect of such benefice, specifying the nature of such exemption, and whether the gross annual value of the benefice on which he is non-resident amounts to or exceeds three hundred pounds *per annum* or not; and every spiritual person who shall have more than one benefice, and who shall reside on one of them, or who shall reside during any period of the year on any dignity, or in the performance of the duties of any office in any cathedral or collegiate church, or who shall be non-resident for any period of the year on account of any of the causes of temporary exemption specified in this act, shall in like manner, and within the like period in each year, notify the same.

Non-residents by exemption without license shall yearly notify to the bishop of the diocese within a certain period.

24. And be it further enacted, That every spiritual person who shall neglect to make such notification as by this act is directed within such period of six weeks as aforesaid, shall forfeit and pay for every such offence the sum of twenty pounds, to be levied by order of the bishop of the diocese, by sequestration, if not otherwise paid, after monition to pay the same, out of the profits of the benefice in respect of which he shall neglect to make such notification, by the bishop of the diocese to whom the notification ought to be made, to be applied, as such bishop may direct, to useful and charitable purposes: Provided always, that it shall be lawful for such bishop to remit or order the repayment of any part of any such penalty, in like manner as is allowed by this act in cases of non-compliance with an order for residence.

Persons neglecting to notify cause of exemption, to forfeit 20l. recoverable by sequestration;

with power of mitigation or remitting by the bishop.

25. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to exempt any spiritual person or persons from any canonical or ecclesiastical censures, or affect any proceedings that shall hereafter be instituted in any ecclesiastical court in order to cause the same to be inflicted, in relation to the non-residence of any spiritual person having or holding any benefice, who shall not have obtained a license according to the provisions of this act to be absent therefrom, nor have any other lawful cause of absence: Provided always, that no proceeding be admitted in any ecclesiastical court against any spiritual person for non-residence not exceeding three months in any one year, at the suit or instance of any person or persons other than the bishop only of the diocese within which the benefice in respect whereof such non-residence shall have taken place shall be locally situated; any thing in any law or laws, or ecclesiastical canon or canons, to the contrary thereof notwithstanding.

Act not to exempt from censure for non-residence without license: but no censure for non-residence shall be in force, nor any proceedings be admitted, except at the suit of the bishop.

26. And be it further enacted, That in every case in which it shall appear to any such bishop as aforesaid that any spiritual person, having or holding any benefice, and not being licensed according to this act to be absent therefrom, nor having any lawful cause of absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such bishop to issue or cause to be issued a monition to such spiritual person forthwith to proceed to and reside thereon, and perform the duties thereof; and to make a return to such monition within a certain number of days after the issuing thereof, so as that in every such case there shall be thirty days between the time of delivering such monition to such spiritual person, or leaving the same at his then usual or last place of abode, or if not there to be found, with the officiating minister or one of the churchwardens, and also a copy thereof at the house of residence (if any such there be) belonging to such benefice, to which any such spiritual person shall be required by such monition to proceed and reside thereon, and the time specified in such monition for the return thereto; and a copy of every such monition shall, immediately on the issuing thereof, be filed in the registry of such bishop's court, and shall be open for inspection on the payment of three shillings and no more; and the spiritual person to whom any such monition shall be sent under this act shall, within the time specified for that purpose, make a return thereto into such re-

If any unlicensed person do not sufficiently reside, the bishop may issue a monition.

Returns to be made to moni-

1817.

tions, which
may be required
to be upon oath.

Where return
shall not be
made, or shall
not be satisfac-
tory, bishop
may order resi-
dence, and if
disobeyed, may
sequester the
profits of the
benefice, and
direct an appli-
cation of such
profits.

gistry, to be there filed; and it shall be lawful for the bishop to whom any such return shall be made, to require such return or any fact contained therein to be verified by the oath of such spiritual person or others, to be taken before some surrogate or justice of the peace, or master extraordinary in chancery, which oath any such surrogate or justice of the peace, or master extraordinary in chancery, is hereby authorized and required to administer, on application being made for that purpose; and in every case where no such return shall be made, or where such return shall not state such reasons as shall be deemed satisfactory by such bishop for the non-residence of the spiritual person to whom such monition shall have been sent as aforesaid, or where the same or any of the facts contained therein shall not be so verified as aforesaid when the same shall have been required, then and in such case it shall be lawful for such bishop to issue an order in writing under his hand and seal, to require such person to proceed to and reside as aforesaid, within thirty days after such order in writing, or a copy thereof shall have been delivered or left in like manner as is herein-before required as to monitions; and in case of non-compliance it shall be lawful for such bishop to sequester the profits of such benefice of such spiritual person as aforesaid, until such order shall be complied with, or such sufficient reasons for non-residence stated and proved as aforesaid; and to direct, by any order to be made for that purpose under his hand, and filed as aforesaid, the application of such profits, after deducting the necessary expenses of serving the cure, either in the whole or in such proportion as he shall think fit, in the first place, to the payment of such reasonable expenses as shall have been incurred in relation to such monition and sequestration, and in the next place towards the augmentation or improvement of any such benefice, or the house of residence thereof, or any of the buildings and appurtenances thereof, or towards the improvement of any of the glebe or demesne lands thereof, or to order and direct the same or any portion thereof to be paid to the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, to be applied for the purposes of such augmentation as such bishop shall, in his discretion, under all circumstances, think fit and expedient; and it shall also be lawful for any such bishop, within six months after such order for sequestration, or within six months after any money shall have been actually levied by such sequestration, to remit to any such spiritual person any part or proportion of such sequestered profits, or cause the same or any part thereof that shall have been paid or directed to be paid to the governors of Queen Anne's bounty to be repaid to such spiritual person, which repayment the said governors are hereby authorized and required, upon an order under the hand of any such bishop, to make out of any money then in their hands, or if no money shall then be in their hands, out of the next money that shall come to their hands, in any case in which, by reason of the subsequent obedience of any such spiritual person to any such monition or order, or the stating and proving such sufficient reasons as aforesaid, such bishop shall think the same proper: Provided always, that when any such spiritual person shall think himself aggrieved by reason of any such sequestration issued by any bishop, it shall be lawful for such spiritual person, within one month after the making any order for any such sequestration as aforesaid, to appeal to the archbishop of the province to which such bishop shall belong, who shall forthwith, either by himself or some commissioner or commissioners appointed from among the bishops of his province for that purpose under his hand and seal, make or cause to be made due inquiry into the same, and make such order therein or relating thereto, or to the profits that shall be so sequestered as aforesaid, for the return to such spiritual person of the same or any part thereof, or otherwise, as shall, under all the circumstances of the case, appear to such archbishop (after such inquiry made by himself or by his commissioner or commissioners, and in the latter case, after the substance of such inquiry shall have been returned in writing to the said archbishop) to be just and proper: Provided always, that the party so appealing shall give security to the bishop for the payment of such reasonable expenses occasioned by the appeal,

Appeal against
sequestration
may be made to
the archbishop.

Appellant to
give security for
payment of the
expenses.

appeal, as the archbishop or his commissioner or commissioners shall award: Provided also, that no such order for any sequestration shall be put in force during such appeal as aforesaid, and until the same shall be determined.

1817.

27. And be it further enacted, That every spiritual person to whom any such monition or order in writing shall be sent as aforesaid under this act, who shall be, at the time of the issuing thereof, absent from residence in or upon his benefice contrary to the provisions of this act, but who shall in obedience to such monition or order forthwith return to due residence, and the profits of whose benefice shall by reason of such return not be sequestered, shall nevertheless pay all costs, charges, and expenses incurred by reason of the issuing and serving such monition or order, to be levied as any costs may be levied upon any spiritual person by any bishop under any of the provisions of this act.

Persons who shall return to residence on monition shall pay the costs.

28. And, to the intent effectually to enforce *bond fide* residence according to the intent and meaning of such monition and order as aforesaid, be it further enacted, That if any spiritual person not licensed under this act to be absent from his benefice, nor having other lawful cause of absence from the same, who, after any such monition or order as aforesaid requiring his residence, and before or after any such sequestration as aforesaid, shall in obedience to any such monition or order have begun to reside upon his benefice, shall afterwards, and before the expiration of six months next after the commencement of such residence, without the leave of such bishop, wilfully in the judgment of such bishop absent himself from such benefice, it shall be lawful for such bishop, without issuing any other monition or making any other order, again to sequester and apply the profits of such benefice, as before directed by this act, for the purpose of enforcing the residence of such spiritual person, according to the true intent of the original monition issued by such bishop as aforesaid; and it shall be lawful for the bishop so to proceed in like cases from time to time as often as occasion may require; provided that in each and every of such cases such spiritual person shall be entitled to appeal against such sequestration, in such manner and upon such terms as herein-before is and are mentioned touching appeals respecting sequestration, but nevertheless the same shall be in force during such appeal.

If any person returning to residence on monition shall, before six months thereafter, absent himself, the bishop may, without monition, sequester the profits of the benefice.

29. And whereas it is expedient that bishops should be empowered summarily to punish past non-residence, as well as to compel residence in future; be it therefore enacted, That in all cases in which any spiritual person shall have become subject to any penalty or forfeiture for any non-residence, it shall be lawful for the bishop within whose diocese such penalty or forfeiture shall have arisen, to proceed against such spiritual person for such past non-residence, and to levy the penalties incurred thereby by monition and sequestration, and to direct the application thereof in like manner and subject to the same regulations, and with like powers of remitting or ordering the repayment of any part of such penalties, as is directed or allowed in cases of non-compliance with any order for residence.

Bishops empowered to punish past non-residence.

30. And be it further enacted, That in every case in which any archbishop or bishop shall think proper, under all the circumstances, after proceeding by monition for the recovery of any penalty under this act of more than one-third of the value of any benefice, for any non-residence exceeding six months in the year, to remit the whole or any part of any such penalty, such archbishop shall forthwith transmit to his Majesty in council, and such bishop shall transmit to the archbishop of the province to which he belongs, a list of such cases as have occurred in his or their respective dioceses, specifying the nature and special circumstances of each case, and the reasons for the said remission, in the same manner as is directed in relation to the licenses for non-residence granted in non-enumerated cases; and it shall thereupon be lawful for his Majesty in council, or for the said archbishop, as the case may be, to allow or disallow such remission in whole or in part, in the same manner as is provided in this act with relation to the allowance or the disallowance of licenses for non-residence: Provided always, that the decision of the said archbishop,

Penalties, for the recovery of which monition has been issued, may be remitted by the bishop; and special returns made of the reasons for such remission.

1817.

If any spiritual person shall continue under sequestration two years, or incur three sequestrations within that period, the benefice shall become void.

Contracts for letting houses in which any spiritual persons shall by order of the bishop be required to reside, shall be void.

Any person holding possession after the day appointed shall be subject to penalty.

archbishop, with respect to cases transmitted to him from any such bishop, shall be final.

31. And be it further enacted, That if the benefice of any spiritual person shall continue for the space of two years under any sequestration made under the provisions of this act for disobedience to the bishop's monition requiring such spiritual person to reside on his benefice, or shall, under the provisions of this act, incur three such sequestrations in the said space of two years, the spiritual person not being relieved with respect to any of such sequestrations upon appeal, the benefice, in relation to non-residence upon which such sequestration shall have been made, shall become *ipso facto* void; and the bishop of the diocese shall thereupon give notice thereof to the patron or person entitled to present, who shall thereupon present or nominate some clerk thereto other than the spiritual person whose benefice shall have so continued under such sequestration, or who shall have incurred such sequestrations as aforesaid, as if the same had been avoided by the natural death or resignation of such spiritual person.

32. And be it further enacted, That all contracts or agreements made for the letting of the house of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupation of the same, belonging to any benefice, to which house of residence any spiritual person shall be required by order of the bishop as aforesaid to proceed and to reside therein, or which shall be assigned or appointed as a residence to any curate by the bishop, shall, upon a copy of such order, assignment, or appointment being served upon the occupier thereof, or left at the house, be null and void; and a copy of every such order, assignment, or appointment shall immediately on the issuing thereof be transmitted to one of the churchwardens of the parish, or such other person as the bishop shall think fit, and be by him forthwith served on the occupier of such house of residence, or left at the same: And any person continuing to hold any such house of residence, or any such building, garden, orchard, or appurtenances, after the day on which the said spiritual person shall be directed by such order to reside in such house of residence, or which shall be specified in any such assignment or appointment, and after service of such copy as aforesaid, or the same being so left as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the bishop in writing for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard, or appurtenances, together with the expense of serving such order, in case it shall have been deemed necessary specially to serve such order, to be allowed by the bishop issuing the order or making such assignment or appointment as aforesaid, and to be recovered and applied in like manner as the penalties for non-residence are directed to be recovered and applied by the provisions of this act; and it shall also be lawful for the spiritual person so directed to reside as aforesaid, or curate to whom any such residence is assigned, to apply to any justice of the peace or magistrate of the county, riding, province, city, or place, for a warrant for the taking possession thereof; and the justice of the peace to whom any such order for such possession is produced shall and he is hereby required thereupon to give a warrant for such possession, and possession may thereupon be taken of such house under such warrant at any time in the day-time, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise; any thing in any act or acts of parliament or law or laws to the contrary notwithstanding.

Not liable to penalty while the tenant shall continue to occupy.

No oath relating to residence shall be required of any vicar.

Penalties not recoverable for

33. Provided always, and be it further enacted, That no spiritual person shall be liable to any penalties for not residing in any such house of residence, during such time as such tenant shall continue to occupy such house of residence or other buildings necessary to the occupation of the same.

34. And be it further enacted, That from and after the passing of this act, no oath shall be required of or taken by any vicar in relation to residence on his vicarage; any law, custom, constitution, or usage to the contrary thereof notwithstanding.

35. And be it further enacted, That no penalty or forfeiture shall be recovered

vered by any proceeding or action against any spiritual person under the provisions of this act, other or further than those which such spiritual person may have incurred during the year ending on the thirty-first day of December immediately preceding the commencement of such proceeding or action.

1817.

more than one year.

86. And be it further enacted, That every penalty for non-residence under this act, in respect of which no proceeding shall have been had by monition before the first day of April next after the year in which the same shall have been incurred, may be recovered by action or suit in the manner by this act directed.

Penalties not levied under monition may be recovered by action.

87. And be it further enacted, That no action of debt, bill, plaint, or information against any spiritual person, for the recovery of any penalties and forfeitures under this act, shall be commenced or filed in any of his Majesty's courts of Record at Westminster, or the court of Great Sessions in Wales, until the first day of May after the expiration of the year in which the alleged offence shall have taken place.

Actions for penalties not to be commenced before 1st May after expiration of the year.

38. And be it further enacted, That for all the purposes of this act the year shall be deemed to commence on the first day of January, and be reckoned therefrom to the thirty-first day of December, both inclusive.

Commencement and conclusion of the year.

39. And be it further enacted, That for all the purposes of this act the months therein named shall be taken to be calendar months, except in any case in which any month or months are to be made up of different periods less than a month, and in every such case thirty days shall be deemed a month.

Calendar months to be taken for the purposes of this act.

40. And whereas, notwithstanding the regulations contained in this act, spiritual persons may through inadvertence, and in many cases from unavoidable circumstances and causes, become subject to penalties and forfeitures and vexatious prosecutions, unless provision is made for the prevention thereof; be it therefore enacted, That from and after the passing of this act, no writ shall be sued out against, nor any copy of any process at the suit of any informer be served upon any spiritual person, for any penalty or forfeiture incurred under any of the provisions of this act, until a notice in writing of such intended writ or process shall have been delivered to him, or left at the usual or last place of his abode, and also to the bishop of the diocese, by leaving the same at the registry of his diocese, by the attorney or agent for the party who intends to sue or cause the same to be sued out, or served one calendar month at the least before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party has or claims to have, and the penalty or penalties for which such person intends to sue, and on the back of which notices respectively shall be endorsed the name of such attorney or agent, together with the place of his abode; and no such notice shall be given before the first day of April in the year next after any such penalty or penalties shall have been incurred.

No action to be commenced for any penalty, until after one calendar month's notice given to the defendant and bishop of diocese.

41. And be it further enacted, That no plaintiff shall recover any verdict against any spiritual person for any penalty or forfeiture under the provisions of this act, unless it is proved upon the trial of such action that such notices were respectively given as aforesaid; but in default thereof such spiritual person shall recover a verdict with double costs.

Plaintiff not to recover without proof made that such notices were given.

42. And be it further enacted, That no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notices hereby directed to be given.

No evidence to be given but such as is contained in the notices.

43. And be it further enacted, That it shall be lawful for any spiritual person against whom any action shall be brought for any penalty or forfeiture under the provisions of this act, by leave of the court in which such actions shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit; whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

Spiritual person may by leave pay into court, before issue joined, such sum as he shall think fit.

44. And be it further enacted, That the court in which any action, bill, plaint, or information shall be depending for the recovery of any penalty or forfeiture

The court in which any action shall be de-

1817.

pending, may require the diocesan to certify the reputed annual value of benefices, &c.

forfeiture for non-residence under this act, may and shall, upon application made for that purpose, require, by rule or order of the said court or any judge thereof, the bishop of the diocese within the limits of which the benefice shall be locally situate, or to whom the same shall be subject according to the provisions of this act, for or by reason of non-residence in, at, or upon which the penalties and forfeitures shall be sought to be recovered by such action, bill, or information, to certify in writing under his hand to the said court, and also to the party for that purpose named in the said rule or order, the reputed annual value of such benefice; and upon such rule or order being left with such bishop, or the registrar of such bishop, such bishop shall accordingly certify such reputed annual value; and such certificate shall, in all subsequent proceedings upon such action, bill, plaint, or information, be received and taken as evidence of the annual value of such benefice, for the purposes of this act; without prejudice nevertheless to the admissibility or effect of any such other evidence as may be offered or given respecting the actual value thereof.

License may be pleaded in bar of action; and in case of non-suit, &c. the defendant shall have double costs.

45. And be it further enacted, That it shall be lawful for any spiritual person to whom any license for non-residence shall have been granted, and against whom any action shall be brought for any penalty or forfeiture by reason of any non-residence, or any matter or thing relating whereto any such license under this act has been granted, to plead such license in bar of any such action; and if the plaintiff in such suit or action shall discontinue any such suit or action after any plea of license shall have been pleaded thereto under this act, then and in such case the defendant in such suit or action shall have full costs of suit; and if in any such suit or action a verdict shall be given for the defendant, or the plaintiff shall become nonsuit, the defendant shall have double costs, and have the like remedy for the same as any defendant has in other cases to recover costs by law; and it shall be lawful for the court, or any judge of the court in which any suit or action shall be commenced, upon any application made in that behalf, to order and direct, if such court or judge shall deem it expedient so to do, that the plaintiff in any such suit or action shall give security for the payment of such costs, and that all proceedings in any such suit or action shall be staid until such security shall be given as to the court or judge to whom any such application shall be made shall seem fit.

If at the time of filing any monition no action shall have been commenced, none shall be afterwards brought, &c.

46. Provided always, and be it further enacted, That if at the time of filing any monition requiring any spiritual person to reside on his benefice, or to recover the penalties incurred by past non-residence, no notice of any action for any such penalty or forfeiture shall have been already given in manner aforesaid, then and in such case no such action, suit, bill, plaint, or information shall be afterwards brought for any penalty or forfeiture incurred by reason of any non-residence of such spiritual person before the issuing of such monition, or during any proceedings that may be had under such monition; and if any such action or suit shall be so commenced, the defendant therein may plead in bar thereof, that such a monition as aforesaid has issued in respect of the same benefice; and such defendant, unless upon application to the court the same shall be dispensed with, shall, upon pleading such matter, file or cause to be filed an affidavit in the said court, thereby stating the period specified in such monition, and that, according to the belief of the defendant, the bishop who has issued or caused such monition to be issued is proceeding upon the said monition, to the intent to make the same effectual to the intents and purposes of this act, otherwise such plea shall not be good or available in the law.

No penalty to be levied against the person where it can be recovered by sequestration within three years.

47. And be it further enacted, That no penalty or costs incurred by any spiritual person by reason of any non-residence on his benefice, shall be levied by execution against the body of any such person, whilst he shall hold the same or any other benefice out of the profits of which the same can be levied by sequestration within the term of three years; and in case the body of any such spiritual person shall be taken in execution for the same, the court in which the same was recovered, or any judge thereof, may and shall, upon

upon application made for that purpose, discharge the party from such execution, in case it shall be made to appear to the satisfaction of such court or judge that such penalty and costs can be levied as aforesaid.

1817.

48. And be it further enacted, That if any spiritual person holding any benefice, who does not or shall not actually reside thereon nine months in each year (unless such person shall do the duty of the same, having a legal exemption from residence, or a license to reside out of the same, or to reside out of the parsonage house or vicarage house, or other usual house of residence belonging to the same), shall for a period exceeding three months absent himself from his benefice, without leaving a curate duly licensed or other spiritual person to perform, and who shall duly perform the ecclesiastical duties of such benefice, or shall for the period of three months after the death, resignation, or removal of any curate who has served his church or chapel, neglect to notify such death, resignation, or removal to the bishop of the diocese, or to nominate to the bishop of the diocese a proper curate, then and in every such case, and in every case in which no curate shall be nominated to the bishop for the purpose of being licensed by him within such period as aforesaid, the bishop is hereby authorized to appoint and license a proper curate, with such salary as by this act is allowed and directed, to serve the church or chapel of the parish or place in respect of which such neglect or default shall have occurred: Provided always, that the license shall in every case specify whether the curate is required to reside within the parish or place or not; and if the curate is permitted by the bishop granting the license to reside out of the parish or place, the grounds upon which the curate is so permitted to reside out of the parish or place shall be specified in the said license, and the distance of the residence of any curate from any church or chapel which he shall be licensed to serve shall not exceed five statute miles, except in cases of necessity, to be approved by the bishop, and specified in the licenses.

Non-resident incumbents neglecting to appoint curates, bishop to appoint.

49. And be it further enacted, That in every case where a curate is appointed to serve a benefice upon which the incumbent is non-resident for more than three months in the year from exemption, license, or otherwise, such curate shall be required by the bishop to reside within the parish; provided the gross value of such benefice amounts to three hundred pounds a year or upwards, and the population amounts to three hundred persons or upwards, or provided the population amounts to one thousand persons or upwards, whatever may be the value of such benefice: Provided always, that whenever it shall be made out to the satisfaction of such bishop, that from special and peculiar circumstances great inconvenience would arise from such curate being compelled to reside within the parish, it shall be lawful for the bishop to allow such curate to reside in some near and convenient place: Provided also, that the license to be granted to such curate shall specify the special circumstances which have induced the bishop to allow such residence out of the parish, and shall be entered and filed in the registry of the diocese.

Curate to reside on all benefices above 300l. a year, &c. except under special circumstances.

50. And be it further enacted, That whenever it shall appear to the satisfaction of any bishop, either of his own knowledge, or upon proof by affidavit laid before him, that by reason of the number of churches or chapels belonging to any benefice locally situate within his diocese, or the distance of such churches or chapels from each other, or the distance of the residence of the spiritual person serving the same from such churches or chapels, or any or either of them, or the negligence of the spiritual person holding the same, that the ecclesiastical duties of such benefice are inadequately performed, such bishop may by writing under his hand require the spiritual person holding such benefice to nominate to him a fit person or persons, with sufficient stipend or stipends, to be licensed by him to perform or to assist in performing such duties, specifying therein the grounds of such proceeding; and if such spiritual person shall neglect or omit to make such nomination for the space of three months after such requisition so made as aforesaid, then and in every such case it shall be lawful for such bishop to appoint a curate or curates, as the case shall appear to such bishop to require, with such stipend

If duty be inadequately performed, the bishop may appoint curate.

or

1817.

or stipends as such bishop shall think fit to appoint, not exceeding in any case in the whole the stipends allowed to curates by this act, nor, except in the case of negligence, exceeding one-half of the gross annual value of the benefice, although the spiritual person to whom such churches or chapels shall belong shall actually reside or serve the same: Provided always, that such requisition, and any affidavit made to found the same, shall be forthwith filed by the bishop in the registry of his court: Provided also, that it shall be lawful for any such spiritual person, who shall think himself aggrieved by any such appointment of such curate or curates, to appeal to the archbishop of the province to which such bishop shall belong, in such and the like manner, and under such provisions and directions, as are allowed to any spiritual person thinking himself aggrieved by any sequestration issued by any bishop.

Bishops may enforce performance of church service both morning and evening.

Statement of particulars necessary to be given by persons applying for a license for a curate.

Bishops shall appoint salaries to curates.

51. And be it further enacted, That in all cases where the bishop of the diocese shall deem it proper to enforce the performance of morning and evening service on Sundays, or any other service required by law in any parish church or parochial chapel, or the chapel of any extra-parochial place, it shall be lawful for such bishop to enforce the same by monition and sequestration, to be issued in the manner by this act provided.

52. And be it further enacted, That every bishop to whom any application shall be made for any license for a curate to serve for any person not duly residing upon his benefice, shall, before he shall grant such license, require a statement of all the particulars by this act required to be stated by any person applying for a license for non-residence; and it shall not be lawful for any bishop to grant a license to any curate to serve the church or chapel of any person as aforesaid, upon any such application as aforesaid, until a statement of all such particulars as aforesaid shall have been delivered to him; and such statement shall be kept and filed and preserved from public inspection, and disclosed only in like manner and in such cases as is before directed as to statements of persons applying for licenses for non-residence.

53. And be it further enacted, That it shall be lawful for the bishop, and he is hereby required, subject to the several provisions and restrictions in this act contained, to appoint to every curate such salary as is allowed and specified in this act; and every license to be granted to a stipendiary curate under this act shall contain and specify the amount of the salary allowed by the bishop to the curate; and such license, or any copy of the registry thereof, signed by the registrar of the diocese or his deputy, shall be evidence of the amount of the salary so appointed to any curate in all courts of law or equity; and in case any difference shall arise between any rector or vicar or person holding any benefice, and his curate, touching such stipend or allowance, or the payment thereof, or of the arrears thereof, the bishop, on complaint to him made, may and shall summarily hear and determine the same; and in case of wilful neglect or refusal to pay such stipend, salary, or allowance, or the arrears thereof, he shall be and is hereby empowered to proceed by monition and sequestration to sequester the profits of the benefice for and until payment of such stipend or allowance or the arrears thereof: Provided always, that the curate obtaining any such license shall pay to the secretary or officer of the bishop the sum of one pound, exclusive of any stamp duty which may be chargeable thereon; which said sum of one pound shall be in remuneration of all and every fee or fees now demandable by the said secretary or officer for obtaining such license, or for the signature of any declaration by the said curate in consequence of such license, or of any certificate of such curate having signed such declaration; and provided also, that from and after the passing of this act, as often as any person shall be licensed to two or more curacies within the same diocese at one and the same time, it shall be sufficient for such person to sign one declaration only, appointed to be signed by an act intituled An Act of Uniformity; and also that it shall be sufficient for such person to produce one certificate only of his having so signed such declaration before the bishop of the diocese.

Stipends to curates of incum-

54. And be it further enacted, That it shall be lawful for the bishop to appoint

point for the curate any stipend or allowance not exceeding seventy-five pounds *per annum*, and also the use of the house of residence, with the gardens and stables belonging thereto, or a further sum of fifteen pounds in lieu of the use of the rectory or vicarage house, or other houses of residence, in case there shall be no house, or it shall not appear to the bishop convenient to allot or assign the house to the curate, in respect of any benefice to which the spiritual person holding the same was instituted or appointed before the twentieth day of July, one thousand eight hundred and thirteen; but it shall not be lawful for the bishop to assign any greater stipend or allowance than aforesaid, in respect of any such benefice, during the incumbency of any such spiritual person as aforesaid, unless with the consent of the spiritual person holding the benefice, or in case of neglect to appoint or to nominate to the bishop a proper curate.

55. And be it further enacted, That in every case in which any spiritual person shall have been, after the twentieth day of July, one thousand eight hundred and thirteen, or shall hereafter be instituted or inducted, or nominated or appointed to, or otherwise become incumbent or possessed of any benefice, and shall not duly reside thereon, unless such person shall do the duty of the same, having a legal exemption from residence, or a license to reside out of the same, or to reside out of the parsonage or vicarage, or other usual house of residence belonging to the same, the bishop shall appoint for the curate licensed to serve such benefice of such non-resident incumbent or person as aforesaid, in his absence, such salary as is herein-after next mentioned; (that is to say,) such salary shall in no case be less than eighty pounds *per annum*, or than the annual value of the benefice, if the gross value thereof shall not amount to eighty pounds *per annum*; and such salary shall not be less than one hundred pounds *per annum*, or than the whole value as aforesaid, if the said value shall not amount to one hundred pounds *per annum* in any parish or place where the population, according to the returns then last made in pursuance of any act or acts of parliament, shall amount to or exceed three hundred persons; and such salary shall not be less than one hundred and twenty pounds *per annum*, or the whole value as aforesaid, if the said value shall not amount to one hundred and twenty pounds *per annum* in any parish or place where the population shall appear as aforesaid to amount to or to exceed five hundred persons; and such salary shall not be less than one hundred and fifty pounds *per annum*, or than the whole value as aforesaid, if the said value shall not amount to one hundred and fifty pounds *per annum*, in any parish or place where the population shall appear as aforesaid to amount to or to exceed one thousand persons: provided always, that the annual value of all benefices of which the value, estimated as is herein provided, does not amount to one hundred and fifty pounds *per annum*, shall be estimated from the returns made by the bishops of the several dioceses to the governors of Queen Anne's bounty; or from any future returns which may be made by the said bishops to the said governors respecting parishes or places omitted in the said returns; or respecting parishes or places in the actual income of which it shall be made appear to the bishops that any considerable variation has taken place, either by augmentation made by the said governors or otherwise.

56. And be it further enacted, That in any parish or place where it shall appear to the satisfaction of the bishop that the actual annual income of the benefice, clear of all deductions, exceeds the sum of four hundred pounds *per annum*, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, a salary or allowance of one hundred pounds *per annum*, notwithstanding the population of such parish or place may not appear as aforesaid to amount to three hundred persons; and that in any parish or place where the actual annual income shall appear to exceed four hundred pounds as aforesaid, and where the population shall also appear as aforesaid to amount to or exceed five hundred persons, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, any

1817.

bents before
July 20, 1813,
not to exceed
certain rates,
except in cases
of neglect.

The salaries
payable to cu-
rates, to be in
proportion to
the value and
population of
the benefices.

Where the be-
nefice exceeds
400l. an allow-
ance may be
made to curate
of 100l. per
annum, &c.

1817.

Smaller salaries
to be allowed to
curates in cer-
tain cases.

Salary of curate
engaged to
serve inter-
changeably at
different places
belonging to the
same incum-
bent.

Spiritual per-
sons not to serve
more than two
churches in one
day, except in
certain cases,
and with special
license for that
purpose from the
bishop.

How the salaries
shall be adjusted
where the curate
is permitted to
serve in an ad-
joining parish.

any larger stipend or allowance, so that the same shall not exceed by more than fifty pounds *per annum* the amount of the stipend or allowance hereinbefore respectively required to be assigned to any such curate.

57. And be it further enacted, That in every case in which it shall be made out to the satisfaction of the bishop of any diocese, that any spiritual person holding any benefice is or has become non-resident or incapable of performing the duties thereof from age, sickness, or other unavoidable cause, and that from these or from any other special and peculiar circumstances of the case great hardship or inconvenience would arise if the full amount of salary specified in this act should be allowed to the curate, then and in such case it shall be lawful for such bishop to assign to the curate any such salary less than the said full amount in this act specified, as shall under all the circumstances appear to him just and reasonable: provided always, that in the license granted in every such case it shall be stated, that for special reasons the bishop hath not thought proper to assign to the curate the full amount of salary allowed or required to be assigned by this act: provided also, that such special reasons shall be entered fully and at large in a separate book to be kept for that purpose, and to be deposited in the registry of the diocese, which book shall not be open to inspection unless with the leave of the bishop or by other proper authority, as in the cases of application for licenses for non-residence.

58. And be it further enacted, That if any incumbent of two or more benefices, residing *bond fide*, in different proportions of each and every year, on some or one other of such benefices, the full period specified by this act, shall employ a curate to perform ecclesiastical duty interchangeably from time to time upon such of the benefices from which he shall be absent during his own actual residence upon any other thereof, then and in such case it shall be lawful for the bishop to assign to any such curate any salary not exceeding such salary as would be allowed under this act for the largest of such benefices, nor less than would be allowed for the smallest, as to the bishop shall under all the circumstances appear just and reasonable: provided always, that if any such incumbent shall employ a curate or curates for the whole year upon each or any of such benefices, such incumbent so residing *bond fide* as aforesaid, then and in such case it shall be lawful for the bishop to assign to either or each of such curates any such salary less than the amount specified in this act, as he shall think fit.

59. And be it further enacted, That from and after the passing of this act no spiritual person shall serve more than two churches in one day, or two chapels, or one church and one chapel, in one day, unless from the local situation of the churches or chapels, or from the value of the benefices to which they belong, or other special causes, it may in the judgment of the bishop be expedient or necessary, for the performance of ecclesiastical duties in such places, to grant license to any spiritual person to serve three churches or chapels, then and in such case it shall be lawful for the bishop to grant such license to any spiritual person to serve three churches or chapels, not being distant from each other more than four measured miles: provided always, that in every such case the reasons for granting such license shall be stated by the bishop in the license granted for serving the third of such churches or chapels held by such spiritual persons, and such license shall not be valid or effectual unless the reasons for granting the same are inserted therein as aforesaid: provided always, that the residence of such curate or spiritual person shall be so placed as that it shall not be necessary for him to travel more than sixteen measured miles in one day for the performance of the duties of such churches or chapels.

60. And be it further enacted, That in every such case where any bishop shall find it necessary or expedient, for the obtaining any proper performance of ecclesiastical duties, to license any person holding any benefice to serve as curate of any adjoining or other parish or place, it shall be lawful for such bishop to appoint, for such spiritual person so licensed, a salary less by a sum not exceeding thirty pounds *per annum* than the salary which in the several cases in this act specified the bishop is required to assign and appoint; and

1817.

and in every case where the bishop shall find it necessary or expedient as aforesaid to license one and the same person to serve as curate for more than one parish or place, it shall be lawful for such bishop to direct, that during such time as such curate shall serve such churches or chapels, the salary to be received by him for serving each of the said churches or chapels shall be less by a sum not exceeding thirty pounds *per annum* than the salary which in the several cases hereinbefore mentioned the bishop is required by this act to assign and appoint.

61. And be it further enacted, that all agreements and contracts made or to be made between persons holding benefices and their curates, in fraud or derogation of the provisions of this act, and all agreements and contracts whereby any curate shall undertake or in any manner bind himself to accept or be content with any stipend or salary less than that which shall be stated to be allowed in any license of such curate, shall be void to all intents and purposes in the law whatsoever, and shall not be set up, pleaded, or given in evidence in any court of law or equity; and notwithstanding the payment and acceptance, in pursuance of any such contract or agreement, of any sum less than the sum specified in the license of such curate, or any receipt, discharge, or acquittance that may be given in cases of such payment and acceptance, the curate or his personal representatives shall be and remain entitled to the full amount of what shall remain unpaid of the stipend, salary, or allowance specified in his license; and the payment of what shall so remain unpaid shall, together with treble costs of recovering the same, be enforced by monition, on proof of what shall so remain unpaid to the satisfaction of the bishop, and by sequestration of profits of the benefice, to be issued by the bishop for that purpose: Provided that the application of the curate shall in every such case be made to the bishop within twelve months after he shall have quitted his curacy, or by the representative of any curate within twelve months after his death; and provided also, that no sequestration shall by virtue of this act affect the profits of any benefice beyond the time during which the benefice shall be held by the person liable to make the payment in respect of which such profits shall be sequestered.

Agreements for salaries to curates contrary to this act, void.

62. And be it further enacted, That in every case in which any bishop shall appoint for any curate a salary equal to the whole annual value of such benefice, such salary shall be subject to deduction in respect of all such charges and outgoings as may legally affect the value of such benefice, and to any loss or diminution which may lessen such value, without the wilful default or neglect of the spiritual person holding the benefice.

Curate's salary, if of the value of the benefice, shall be liable to certain charges.

63. And be it further enacted, That it shall be lawful for the bishop, upon the application of any rector, vicar, or spiritual person holding any benefice, the whole profit or income of which shall have been allotted to the curate, to allow such rector, vicar, or spiritual person to deduct and retain therefrom, in any or each year, so much money, not exceeding in any case one-fourth part of such profits or income, or of the salary assigned to the curate, as shall have been actually laid out and expended during the year in the repair of the chancel, parsonage, vicarage, or other house of residence, and premises and appurtenances thereto belonging, in respect of which such rector, vicar, or person as aforesaid, or his executors, administrators, or assigns, would be liable for dilapidations to the successors; and it shall also be lawful for the bishop, in like manner, to allow any rector, vicar, or spiritual person aforesaid, having or holding any benefice the profits or income of which shall not exceed £150 *per annum*, to deduct and retain from the salary allotted to the curate, in each or any year, so much money as shall have been actually laid out and expended in such repairs as aforesaid over and above the amount of the surplus remaining of such profits or income after payment of the salary allotted to the curate, so that the sum so deducted, after laying out such surplus, shall not in any year exceed one-fourth part of the salary allotted to the curate.

The bishop to allow the rector, &c. to deduct from curate's salary, for repairs, to a limited amount, in certain cases.

64. And be it further enacted, That it shall be lawful for the bishop who shall grant any license to any curate to serve any church or chapel where the rector

Curates may be directed to reside in parson-

1817.

age house, in case of non-residence of incumbents.

Curates to pay taxes of parsonage houses in certain cases.

Bishop may direct the curate to give up possession of parsonage.

Rector, &c. shall not dispossess curate of house without order of the bishop, and three months notice to curate: Curate to quit in one month after institution to a vacant benefice, &c.

Curate not to quit curacy assigned him without three months notice to the incumbent and bishop, under a certain penalty.

Bishop may license curate employed without nomination, revoke any license, and

rector or vicar or person holding any benefice is not resident for four months in each year, to allot, if he shall think fit, for the residence of such curate, the parsonage or vicarage house, or usual house of residence of the person holding the benefice, with the offices, stables, gardens, and appurtenances thereto belonging, if there shall be any such house of residence belonging thereto, or any part or parts thereof, during the time of such curate's serving the cure, or during the non-residence of such rector or vicar or spiritual person; and it shall be lawful for the bishop assigning any such house or residence to any curate, to sequester the profits of the benefice to which the house shall belong, in any case in which possession shall not be given up to the curate, and until such possession shall be given, and to apply or direct the application of the profits arising from such sequestration, or to remit the same or any part thereof, as the bishop shall in his discretion think fit.

65. And be it further enacted, That in every case where the bishop shall appoint for the curate licensed to serve any benefice, a salary not less than the whole gross annual value of the same, and shall, in addition to such salary, direct that such curate shall reside in the parsonage or vicarage house, or usual house of residence of the spiritual person holding such benefice, such curate shall be liable during his serving such cure, to the same taxes and parochial rates and assessments, in respect of such house and the appendages thereof of which he may so be in occupation, as if he had been instituted or inducted or nominated or appointed to the said benefice.

66. And be it further enacted, That it shall be lawful for the bishop at any time, upon three months' notice in writing, to direct any such curate to deliver up any such parsonage or vicarage house or usual house of residence, and the offices, stables, gardens, and appurtenances thereto belonging, and such curate shall thereupon peaceably deliver up the possession of the said premises, pursuant to such notice; and in case any such curate shall refuse to deliver up such premises, he shall forfeit and pay to the rector or vicar or spiritual person holding the benefice, the sum of forty shillings for every day of such wrongful possession, to be recovered by such rector or vicar or spiritual person by action of debt in any court of record at Westminster, as any penalties may be recovered for non-residence under this act.

67. And be it further enacted, That it shall not be lawful for the rector or vicar or other person holding any benefice, in any case in which the parsonage or vicarage, or usual house of residence shall have been assigned to the curate as a residence, to dispossess such curate, or take possession thereof, until the permission of the bishop shall have been given in writing for that purpose, and three months notice of such his intention to the curate, who shall thereupon quit the same according to such notice: and every curate who shall reside in the house of residence of any benefice which shall become vacant, shall quit such house of residence within three months after the institution or appointment of any spiritual person thereto, upon being required so to do by the spiritual person instituted or appointed, and having one month's previous notice at the least given to him to quit such house of residence.

68. And be it further enacted, That no curate shall quit any benefice to which he shall be licensed, until after three months notice of his intention to quit given to the person holding such benefice, and to the bishop of the diocese, unless with the consent of the bishop of the diocese, upon pain of forfeiting to the spiritual person holding the benefice a sum not exceeding the amount of his stipend for six months, at the discretion of the bishop, which sum may in such case be retained out of the stipend, if the same or any part thereof shall remain unpaid; or if the same cannot be retained out of the stipend, may be recovered by the spiritual person holding the benefice, as any penalty or forfeiture under this act may be recovered.

69. And be it further enacted, That it shall be lawful for the bishop of the diocese to license any curate who is or shall be actually employed by the rector, vicar, or other incumbent of any church or chapel, although no express nomination of such curate shall have been made to such bishop by the said rector, vicar, or other incumbent; and that the bishop shall have power to

to revoke summarily and without process any license granted to any curate employed in his diocese, or subject to his jurisdiction by virtue of this act, and to remove such curate for any cause which shall appear to such bishop to be good and reasonable; subject nevertheless to an appeal to the archbishop of the province, and to be determined in a summary manner.

1817.

remove curate,
subject to ap-
peal to the
archbishop.

License to cu-
rates, and revo-
cations of such
licenses, to be
entered in the
registry of the
diocese.

70. And be it further enacted, That every bishop who shall grant or revoke any license to any curate under this act shall and he is hereby required to cause a copy of such license or revocation to be entered in the registry of the diocese within which the benefice in respect whereof any such license shall be granted or revocation made shall be locally situate; and an alphabetical list of such licenses and revocations shall be made out by the registrar of each diocese, and entered in a book, and kept for the inspection of all persons, upon payment of the sum of three shillings and no more; and a copy of every such license and revocation with respect to any benefice shall be transmitted by the said registrar to the churchwardens or chapelwardens of the parish, township, or place to which the same relates, within one month after the grant of such license or revocation thereof, to be by them deposited in the parish chest; and every registrar who shall refuse or neglect or omit to make any such entry, or to transmit any such copy, shall forfeit for every such offence or neglect the sum of five pounds, to be recovered as any penalty or forfeiture may be recovered under this act: Provided always, that every such registrar shall for every such copy transmitted to such churchwardens or chapelwardens as aforesaid, be entitled to demand and have from such churchwardens and chapelwardens a fee of ten shillings and no more; and such fee shall be allowed in the accounts of such churchwardens and chapelwardens.

71. And be it further enacted, that all the powers, authorities, provisions, regulations, penalties, forfeitures, clauses, matters, and things in this act contained in relation to bishops in their dioceses, shall extend and be construed to extend to the archbishops in the respective dioceses of which they are bishops, and also in their own peculiar jurisdictions, as fully and effectually as if the archbishops were named with the bishops in every such case.

Clauses relating
to bishops to
apply to arch-
bishops in their
dioceses.

72. And be it further enacted, That in all cases wherein the term benefice is used in this act, the said term shall be understood and taken to mean benefices with cure, and no others, and to comprehend therein, for the purposes of this act, all donatives, perpetual curacies, and parochial chapelries.

Definition of
the term be-
nefice.

73. And be it further enacted, that every archbishop and bishop, within the limits of whose province or diocese respectively any benefice, respectively, exempt or peculiar, shall be locally situate, shall have, use, and exercise all the powers and authorities necessary for the due execution by them respectively of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any benefice, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same or any of them shall be locally situate between the limits of the two provinces, or between the limits of any two or more such dioceses, the archbishop or bishop of the cathedral church, to whose province or diocese the parish church of the same respectively shall be nearest in local situation, shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of the act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively, and the same, for all the purposes of this act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishopric or bishopric, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this act as for all other purposes of ecclesiastical jurisdiction.

Power of arch-
bishops and
bishops as to
benefices, &c.
exempt or pecu-
liar, locally
situate within
their provinces;
and also as to
benefices, &c.
situate in more
than one pro-
vince, or be-
tween the limits
of two.

Peculiars shall
be subject to
the archbishop
or bishop to
whom they
belong.

74. And

1817.

Where jurisdiction is given to bishop, &c. all concurrent jurisdiction to cease.

Monitions and sequestrations.

Penalties to be recovered by monition and sequestration.

Recovery of fees, &c.

Act not to invalidate licenses before 31st Dec. nor to require any license before that time.

Commission to administer oaths not to be subject to stamp duty.

Act not to affect His Majesty's prerogative in granting dispensations.

Parsonage without cure of souls not deemed a benefice.

No archbishop or bishop shall be liable to the penalties for non-residence.

74. And be it further enacted, That in every case in which jurisdiction is given to the bishop of the diocese, or to any archbishop, under the provisions of this act, and for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall wholly cease, and no other jurisdiction in relation to the provisions of this act shall be used, exercised, or enforced, save and except such jurisdiction of the bishop and archbishop under this act; any thing in any act or acts of parliament, or law or laws, or usage or custom to the contrary notwithstanding.

75. And be it further enacted, That in all cases where proceedings under this act are directed by monition and sequestration, such monition shall issue under the hand and seal of the bishop, and being duly served shall be returned, with a certificate of service, into the registry of the consistorial court of such bishop; and thereupon it shall be competent for the party monished to shew cause by affidavit or otherwise, as the case may require, against the sequestration issuing; and unless sufficient cause be shewn to the contrary, the sequestration shall issue under the seal of the said consistorial court, and in such form as is commonly used on that behalf.

76. And be it further enacted, That it shall be lawful for the bishop of any diocese in which any spiritual person shall hold any dignity or benefice, or shall serve as stipendiary curate, to recover any penalty incurred under this act, in a summary way, by monition and sequestration, to be issued in the manner by this act directed, with the like powers and authorities, and subject to the like restrictions in respect to the remission and repayment of such penalty, as are by this act particularly provided in respect to penalties for non-residence: Provided always, that no spiritual person against whom any such proceeding shall have been had by any bishop for the recovery of any penalty, shall thereafter be subject to any action at law by any informer or other person for the recovery of any penalty for the same offence in respect of which such proceeding shall have been so had by the bishop as aforesaid.

77. And be it further enacted, That any fees, charges, costs, or expenses incurred or directed to be paid by any spiritual person under the provisions of this act, which shall remain unpaid for the period of twenty-one days after demand thereof in writing delivered to or left at the usual or last place of abode of the spiritual person liable to the payment thereof, may be recovered by monition and sequestration, to be issued in the manner directed by this act.

78. Provided always, and be it further enacted, That none of the provisions of this act shall extend or be construed to extend to render void or invalid, before the thirty-first day of December next, any license or exemption which would have been otherwise valid and effectual, nor to require any license to be taken before the said thirty-first day of December next, which would not have been required by law before the passing of this act.

79. And be it further enacted, that no commission issued by any bishop to any commissary or commissaries appointed to administer the oaths required to be taken by any curate for the purpose of any license or licenses granted under the provisions of this act shall be subject to any stamp duty; any thing contained in any act or acts of parliament to the contrary notwithstanding.

80. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to alter or affect his Majesty's royal prerogative in the granting of dispensations for non-residence upon benefices, as the same now exists by law.

81. And be it further enacted, That no parsonage that hath a vicar endowed, or that hath a perpetual curate, and having no cure of souls, shall be deemed or taken to be a benefice within the intent and meaning of this act.

82. And be it further enacted, That no archbishop or bishop having or who shall have any benefice, shall by reason of non-residence upon the same be subject or liable to any penalties or forfeitures: Provided always, that any archbishop or bishop who shall hold any benefice *in commendam* with his archbishopric

bishopric or bishopric, shall nominate and appoint a resident curate, according to the provisions of this act.

1817.

83. And be it further enacted, That nothing in this act contained shall be deemed, construed, or taken to derogate from, diminish, prejudice, alter, or affect, otherwise than is expressly provided, any powers, authorities, rights, or jurisdiction already vested in or belonging to any archbishop or bishop under or by virtue of any statute, canon, usage, or otherwise howsoever.

Not to affect powers of bishops ;

84. And be it further enacted, that nothing in this act contained shall extend or be construed to extend to repeal or alter the provisions contained in any act of parliament, or any other provision of law, for the due celebration of divine service in any church or chapel, or for the discharge of any other duty of any rector or vicar, or person holding any benefice, by himself or his curate.

nor the due celebration of divine service.

85. And be it further enacted, that no provision in this act contained shall extend or be construed to extend to that part of the United Kingdom called Ireland.

Act not to extend to Ireland.

59 G. S. c. 40.

1819.

An Act to secure Spiritual Persons in the Possession of Benefices in certain Cases.
[14th June, 1819.]

WHEREAS certain spiritual persons having been possessed of two benefices, which they were lawfully entitled to hold together by virtue of a dispensation granted by the Lord Archbishop of Canterbury, and confirmed under the great seal, have afterwards, without having resigned or otherwise vacated one of the benefices so held by them, obtained a new dispensation to hold another benefice with one of those benefices of which they were before possessed, and have thereupon been put into the possession of such other benefice, by nomination, license, institution, collation and induction, as the nature of the said benefice might require : And whereas doubts have arisen whether, for want of the previous resignation or other vacation by such spiritual persons of such one of the benefices before possessed by them by dispensation, as was not intended to be held with the last taken benefice, the subsequent dispensation was valid in law, and whether not only the benefice intended to be made void, but also the other benefice so previously possessed by such spiritual persons, and intended to be held by them with the other benefice by virtue of such subsequent dispensation, have not been rendered void : And whereas it would be most injurious to the spiritual persons who now hold benefices which may have been so inadvertently rendered void, and to the patrons of the said benefices, by means of lapse to the bishop, or the archbishop, or the crown, if advantage of such avoidance should be taken ; wherefore, and for the relief of such spiritual persons and patrons, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in every case which has occurred before the passing of this act, where a spiritual person has obtained a dispensation to hold a benefice to which he had been nominated, presented, or was to be licensed or collated, with a benefice which he had held with another benefice by virtue of a former dispensation, without having in due time before resigned or otherwise vacated the other benefice included in the former dispensation, and where, for want of such previous resignation or vacation, the benefice held by such spiritual person by the former dispensation, and intended to be secured to him by the subsequent dispensation, may have been rendered void, it shall not be lawful for the King's most excellent Majesty, or any other patron or patrons, or for his said Majesty, or any archbishop or bishop having the right of nomination, presentation, license, or collation, by reason of lapse or otherwise, to any benefice which may have been so rendered void, to nominate, present, license, or collate to any such benefice

Securing benefices in certain cases where dispensation is granted for holding another benefice therewith.

1819.

Incumbents of
such benefices
to enjoy the
emoluments.

by reason of the same having been rendered void in the manner before mentioned.

2. And be it further enacted; That every spiritual person now holding a benefice, which may have been rendered void at any time before the passing of this act, in the manner before mentioned, shall and may, notwithstanding such avoidance thereof, continue henceforth to hold and enjoy the same, and the fruits, advantages, emoluments, and profits thereof, and shall be and be taken to be, to all intents and purposes in the law whatsoever, the lawful incumbent thereof, in the same manner as if the resignation or other vacation of the other benefice held therewith by virtue of the former dispensation had been duly made prior to the subsequent dispensation, and such subsequent dispensation had been good and valid in law; and that every spiritual person now holding a benefice, which may have been so rendered void, shall, notwithstanding such avoidance, be taken to have been the lawful incumbent thereof since such avoidance happened, to all intents and purposes in the law whatsoever; and that all acts and deeds whatsoever, which have been done, performed, and executed by the spiritual person or persons now holding or who shall have held any such benefice since the avoidance thereof, in the manner before mentioned, shall be as valid and effectual, to all intents and purposes in the law whatsoever, as if such avoidance had not taken place; any law, statute, canon, usage, or custom to the contrary in anywise notwithstanding; it being the true intent and meaning of this act, to place the aforesaid spiritual persons, whose benefices have or may become void in the manner before mentioned, precisely in the same situation, to all intents and purposes in the law whatsoever, as if no such avoidance had taken place.

Patrons not
prevented from
nominating to
such benefices
on death or re-
signation of in-
cumbent.

3. Provided always, and be it further enacted, That nothing in this act shall extend, or be construed to extend, to prevent the patron or patrons of any benefice, which may have been rendered void in the manner before mentioned, from nominating, presenting, licensing, or collating to such benefice, on the death, resignation, or cession, or other lawful cause of avoidance of or by the spiritual person now holding any such benefice, in the same manner as if this act had not passed; save and except as to the avoidance made before the passing of this act, in the manner and under the circumstances particularly mentioned and set forth herein.

1820.

1 Geo. 4. cap. 6.

An Act to amend and render more effectual an Act passed in the Fifty-Fifth Year of His late Majesty's Reign, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned.
[6th June, 1820.]

55 G. 3. c. 147.

Barristers
named in com-
missions for

WHEREAS an act was passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater Value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands so taken in Exchange to such Benefices as Parsonage or Glebe houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain Cases, and for other Purposes: And whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of inquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years standing at the least, to be named by the senior judge of Nisi Prius for the county in which the benefice, perpetual curacy, or parochial chapelry whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act shall be situate; but inasmuch as the nomination of such barrister by a judge of Nisi Prius is not applicable to the county of Middlesex; be it therefore enacted by the King's most excellent Majesty,

1820.

Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That where any exchange or purchase shall be made or be proposed to be made under the authority of the said act in any benefice, perpetual curacy, or parochial chapelry, situate within the said county of Middlesex, such barrister shall be named by the chief justice of the court of King's Bench for the time being, or by the chief justice of the court of Common Pleas at Westminster for the time being.

exchanges, &c.
in Middlesex,
to be named
by the chief
justice of the
King's Bench or
Common Pleas.

2. And whereas it is by the said recited act enacted, that so much of the forms contained in the schedules of the said therein-recited acts of the seventeenth and twenty-first years of his then (and now late) Majesty King George the Third, as were applicable to the provisions of that act, should, with such variations thereof as should render them so applicable, be used and applied to the purposes of that act; but inasmuch as the said forms contained in the said schedules are not adapted to the provisions of the said first-recited act, and the endeavours so to apply the said forms have been attended with inconvenience; be it therefore further enacted by the authority aforesaid, That so much of the said first-recited act as directs that the forms contained in the schedules of the said acts of the seventeenth and twenty-first years of the reign of his said late Majesty should be used and applied to the purposes of the said first-recited act, shall be and the same is hereby repealed.

So much of
recited act
as directs the
schedules of
the acts of
17 G. 3. c. 53.
and 21 G. 3.
c. 66. to be
used, to be
repealed.

CANONS, DECREES,

&c. &c.

RELATING TO

TITHES IN ENGLAND.

Pope Gregory's Answers to *Augustine*. (a)

601.

[Johnson's Ecc. L. 601. 1. 1 Spelm. Con. 96. 1.] (b)

Q. **H**OW should Bishops deal with their Clergy, or how should the oblations which the faithful bring to the altar be divided?

A. The Holy Scriptures, and especially the Epistles of the blessed *Paul* to *Timothy*, in which he endeavours to instruct him how he should behave himself in the Church of God, do expressly declare this. It is the custom of the apostolical see to charge bishops, when they are ordained, that the whole income be divided into four parts; the first for the bishop and his family, that he may be able to keep hospitality; the second for the clergy; the third for the poor; the fourth for the repairing of the churches. But, because you, my brother, have been trained up in the monastic rules, you ought not to live apart from your clergy in the *English* Church lately converted to the faith, but as our fathers did in the infancy of the church, when no one said that any thing which he possessed was his own, but they had all things in common.

The estate of the primitive church consisted of oblations, which were to be divided into four parts and equally distributed, 1st, to the bishop, 2d, to the clergy, 3d, to the poor, 4th, for the repairing of churches.

In monasteries every thing was in common.

Eccles. Laws of King *INA*.

693.

[Jo. Ecc. L. 693. 4. (3.) 1 Sp. Con. 181. 187.]

4. Let the church scot (c) be paid by St. Martin's mass: if any one pay it not, let him be amerced forty shillings, and pay the church scot twelve-fold.

Church scot when to be paid.

13. The church scot shall be paid for the roof and fire-hearth, where men are at Christmas.

(a) *Augustine*, the head of a monastery at Rome, afterwards the first Archbishop of Canterbury, was sent to England about the year 596 to convert the English to Christianity. 1 Spelm. Con. 93.

(b) *Lectori*—"Aggredienti jam mihi Acta, Concilia, et Constitutiones in re Ecclesiarum Britannicarum, et quæ ad ea pertinent, pro temeritate nostrâ (Deo annuente), concinnare; in dubium venit (inter tantas antiquitatis caligines, quæ nihil pene integrum, nihil certum, vel non suspectum exhibent) ubi initium ponam, et a quo termino instituti nostri deducam seriem."—*Spelm. Conc.* 1. 29.

(c) *Primitie seminum*, Sp. census ecclesie, Sp. Our old books described frankalmoign thus: "When lands or tenements were bestowed

"upon God, (i. e.) given to such people as are consecrated to the service of God. In our ancient books these gifts of devotion were called churchset, or churchseed, quasi semen ecclesie; but in a more particular sense it is described thus: Certam mensuram bladi tritici significat, quam quilibet olim sancte ecclesie die Sancti Martini, tempore tam Britonum quam Anglorum, contribuerunt. Plures tamen Magnates, post Romanorum adventum, illam contributionem secundum veterem legem Moisi nomine primitiarum dabant, prout in brevi Regis Knuti ad summum Pontificem transmissa continetur, in quo illam contributionem Churchseed appellant, quasi semen ecclesie."—*Fleta*, lib. i. c. 42. Co. Litt. 94. b.

740.

EGBERT'S OR ECGBRIGHT'S Excerptions. (a)

[Jo. Ecc. L. 740. 4. 5, &c. 1 Sp. Con. 258.]

Tithes to be divided into three parts, 1st, for the ornament of the church, 2d, the poor, 3d, the clergy.

4. That every priest teach all that belong to him to know how they are to offer the tithes of all their substance in a due manner to the churches of God.

5. That the priests themselves receive the tithes from the people, and keep a written account of the names of all that have paid them, and divide them in the presence of such as fear (God), according to canonical authority, and chuse the first part for the ornament of the church, and distribute the second part for the use of the poor and strangers, with their own hands, with mercy and all humility; and that the priests reserve the third part to themselves.

16. That no priest be surety (b) for another man, nor sue in the secular courts, relinquishing his own law. (c)

No endowments of tithes to be changed.

24. That churches founded of old be not deprived of their tithes, or any other possessions, in order to give them to new oratories.

None but ecclesiastical services to be done for spiritual possessions.

25. Let one entire manse be given to every church, without other service: for the tithes, oblations of the faithful, houses, churchyards (d), gardens near the church; and for the manse beforementioned, let the priests constituted in them do no service but ecclesiastical. If they have any thing more, let them pay due services for it to their seniors, according to the custom of the country.

For temporal possessions

priests to render the customary services due.

Tithes to be paid of what is got by bearing arms, by handicraft, and by trade.

100. (e) *Augustine* says, Tithes are the tribute of the churches, and of needy souls. The Lord, O man! demands tithes of that whereby thou livest: pay tithes of what thou gettest by bearing arms, by trade, by handicraft. (f) Our God is not indigent; he requires not gifts, but honor.

Legatine Canons at *Cealchythe*. (g)

[Jo. Ecc. L. 785. 17. 1 Sp. Con. 291.]

785.

Tithes to be paid, alms to be given out of the nine parts.

17. As to paying of tithes it is written in the law. (Mal. iii. 10.) As a wise man says, *No man can justly give alms of what he possesseth, unless he hath first separated to the Lord what he from the beginning directed to be paid to him.* And on this account it often happens that he who does not pay tithes, is himself reduced to a tenth; therefore we do solemnly enjoin, that all take care to pay the tenth of all that they possess, because that peculiarly belongs to God: And let them live and give alms out of the nine parts; and we advise that alms be given in secret, because it is written, *When thou givest alms, sound not a trumpet, &c.* Mat. vi. 2.

878.

King ALFRED'S and GUTHRUN'S Laws Ecc. (h)

[Jo. Ecc. L. 878. 6. 1 Sp. Con. 377.]

Tithes to be paid, and the penalty for withholding them.

6. ' If one withhold his tithe, or his Rome-fee, or do not pay his light-scot, or his plough-alms, or deny any ecclesiastical rights, let him pay his *Lash-lite*

(a) Whatever the original Excerptions of *Ecgbright* or *Egbert* (Archbishop of York) might have been, it is clear that they now appear as a code of canons augmented or altered by his successors at pleasure.—See *Seld.* 197. Jo. Ecc. L. c. 7. 144. 146.

(b) *Fidejussorem.*

(c) i. e. the Ecclesiastical Court.

(d) *Atriis.*

(e) As a matter of general rule, I have omitted the preceding canon, it being merely an extract from the Mosaical law respecting tithes: it ends "*Non eligitur nec bonum nec malum, nec alterum commutabitur.*"

(f) *Artificio.*

(g) *Gregory*, Bishop of *Ostia*, and *Theophylact*, Bishop of *Todi*, were sent from *Rome* at this time by Pope *Adrian* to exercise the Papal authority in England in the quality of legates. For further particulars respecting this Synod held by them, see *Johnson*, 785. Pf. and *Seld.* 198.

(h) I have preferred noticing King *Ethelwulf's* grant in a note on account of the uncertainty of its original wording and the consequent disputes it has been the subject of among those who have contested the origin of the right of tithes in this country. *Selden* (on

'*lite* (a) among the *Danes*, his *Wite* among the *English*. If he oppose [those that demand it] and wound a man, let him forfeit his wite; if he kill a man, let him be outlawed; and let all that love right, pursue him with hue and cry; and if he cause men to kill him, by opposing the right of God and the King; and this be averred, let him lie without any satisfaction.' *The laws of Edward and Guthrun have the same provision, adding plough-alsms.*

878.

King ETHELSTAN'S Laws Ecc.

925.

[Jo. Ecc. L. 925. 1. 1 Sp. Con. 396.]

I, *Ethelstan*, King, by the advice of *Wulfhelm*, my archbishop, and other my bishops, command all my reeves, in the name of the Lord and his saints, that they do, in the first place, give the due tithes of all my estate, both of the living stock and of the fruits of the earth; and that all the bishops do the same of all that belongs to them, as also my aldermen and reeves. And my will is that my bishops, and aldermen, and reeves, give this in charge to all that are subject to them, and that they do it effectually by the time that we here fixed, that is, the beheading of St. *John Baptist*. Let us consider what *Jacob* said unto the Lord, *I will give thee my tithes* (b) *and my peace-offerings*. And what our Lord saith, *To all them that have shall be given, and they shall abound*. And we may remember what to our terror is written in this book, (c) *If we are unwilling to pay our tithe, the nine parts shall be taken from us*. It is not my will that ye get any thing for me by indirect means.

Tithe to be paid of the living stock and the fruits of the earth of the king's estate.

Canons of Odo, Archbishop of Canterbury.

943.

[1 Sp. Con. 418. Jo. Ecc. L. 943. 10.]

10. We faithfully intreat you, as to the paying of tithes, as it is written in the law, *The tenth part of all thine increase, and thy first-fruits, carry into the house of the Lord thy God*. And again, by the Prophet he says, *Bring your tithes into my storehouse, &c.* Mal. iii. 10. Therefore with an obtestation we charge, That all take care to pay tithe of all that they possess: Because this doth peculiarly belong to God: And that they live and give alms out of the nine parts.

(on Tithes, p. 204.) places it about the year 854; and after stating the ways in which it has been abbreviated by various authors, gives a copy from a chartulary of the Abbey of *Abingdon*, (MS. Cott. Claud. c. ix.*) of which the following is a translation:—

"I, *Æthelulf*, by the grace of God, King of the West Saxons, at the holy and celebrated feast of Easter, for the good of my soul and of my successors and people, have taken good counsel with my Bishops, Earls, and great men, that I should not only give the tenth part of lands throughout our kingdom to the churches, but also grant it to our ministers placed in them for ever, so that such our gift, fixed and immutable, may remain discharged of all royal and secular services. It has pleased *Ælstan*, Bishop of Sherborne, and *Swithin*, bishop of Winton, and our chiefs together. This we have done in honor of our Lord Jesus Christ and the blessed Virgin Mary and all Saints, and in reverence of the feast of Easter, that God may be propitious to us

"and our posterity. This charter was written in the year from the incarnation of our Lord Jesus Christ, 854. Indiction II. On Easter Day, at our palace of Winton. Whoever is willing to increase our grant, may God increase the days of his prosperity; but if any one shall dare to lessen or change it, let him know that he shall render an account before the tribunal of Christ, unless he shall first give satisfaction. ✕ I *Æthelwlf*, King, ✕ I *Ælstan*, Bishop, ✕ I *Swithun*, Bishop, ✕ I *Wlflaf*, Abbot, ✕ I *Werferd*, Abbot, ✕ I *Æthered* and I *Alfred*, sons of the King, have consented."

(a) *Lashlits* and *Wits* denote the common forfeiture among the Danes and English respectively, and are of frequent occurrence in the Saxon laws: the former was, in most offences, twelve ores (commonly twenty shillings); the latter was thirty shillings.

(b) This is an interpolation. See Gen. xviii. 22.—*Johns*.

(c) This is a saying of *Ambrose*.—*Johns*.

* 1 Sp. Con. 348. There are three copies, all of which differ from this.

944.

King EADMUND's Laws Ecc.

[1 Sp. Con. 420. Jo. Ecc. L. 944. 2.]

2. We enjoin all christian men the paying of tithes, by virtue of their christian profession, as also their church scot, and alms fee. (a) Let them who will not do it be excommunicated.

950.

Laws of the Northumbrian Priests.

[1 Sp. Con. 501. Jo. Ecc. L. 950. 51.]

Penalty for withholding tithes.

51. —. If any withhold his tithes, and he be a King's Thane, let him pay nine marks and a half; (b) if a landed man, five marks and a half; if a common man, twelve ore. (c)

957.

ELFRIC's (d) Canons.

[1 Sp. Con. 578. Jo. Ecc. L. 957. 24.]

Tithes to be divided into three parts; 1. for reparation of the church; 2. for the poor; 3. clergy.

24. The Holy Fathers have also decreed that tithes be paid into God's Church, and that the priest(e) go to them, and divide them into three parts, one for the reparation of the church, a second to the poor, a third to God's servants, who attend the church.

958.

King EDGAR's Laws Ecc.

[1 Sp. Con. 444. Jo. Ecc. L. 958. 1. 2. 3.]

This is the provision which King *Edgar* made with consent of his counsellors to the praise of God, to his own royal dignity, and the benefit of all the nation.

All tithes to be paid to the mother church.

1. First, that God's churches possess their right, and that every one pay his tithe to the ancient minster to which the district belongs, whether of the *Thane's* demesne land, or of his land let out to others, let it be so paid as his plough goes.

A Thane who has a church with a burying-place on his bocland, may endow it with a third of his tithes. If a

2. If there be any *Thane* who hath on land, which he holds by written deed, a church, with a burying-place belonging to it, let him pay the third part of his tithes into his own church. If he hath a church with no burying-place belonging to it, let him give his priest what he will out of the remaining nine parts; and let every church-scot go into the ancient minster from all the ground of freemen.

church without a

burying-place, to be endowed out of the nine parts. Church-scot to be paid to the mother church.

Penalty for not paying tithes at the times appointed.

3. And let all the tithe of young animals be paid by *Pentecost*, and of the fruits of the earth by the *Equinox*; and let every church-scot be paid by *Martin's-mass*, under pain of the full mulct, which the Doom-book mentions; and if any will not pay the tithe as we have commanded, let the king's reeve, and the bishop's reeve, and the mass-priest of the minster, go to him and take by force the tenth part for the minster to which it belongs, and deliver to him the ninth part, and let the eight parts be divided into two, and let the lord take one half, the bishop the other, whether it be a king's man or a thane's man.

(a) "This is most probably plough-alms, mentioned in the sixth law of King *Alfred* and *Godrun*; and it is said to be an offering made to the church in proportion to the number of plough-lands which every man had."—*Johns*.

(b) Ten half marks.—*Spelm*.

(c) For the value of the ore, see *Seld*. 203.

(d) It is not exactly known who this *Elfric* was; those who are desirous of further particulars on the subject, may consult *Jo. Pf*. 957. and *Sir H. Spelman*.

(e) *Somner* translates with a *Quære adeaturque sacerdos et distribuantur*.

Canons in King EDGAR's Reign.

[1 Sp. Con. 447. Jo. Ecc. L. 960. 7. 54.]

7. That no suit between priests be commenced before secular men, but that their equals be arbitrators and umpires; or let them lay their cause before the bishop, if there be a necessity.

Priests not to sue in secular courts.

54. And that priests remind the people of their duty to God, to be just in tithing and other matters, first the *plow-alsms*, within fifteen nights of *Easter*; and the tithe of young animals by *Pentecost*; and the fruits of the earth by *All Saints*; the Rome-fee at *Peter-mass*; and the church-scot at *Martin's-mass*.

Tithe of young animals to be paid at *Pentecost*; of fruits of the earth at *All Saints*.

Plow-alsms to be paid at *Easter*, *Rome-fee* at *Peter-mass*, church-scot at *Martin's-mass*.

Penitential Canons.

963.

[Jo. Ecc. L. 963. 68. 69.]

68. Let him that hath riches rear churches to the praise of God, and endow them according to his abilities, and give them lands, and let inferior (a) [clergymen] be brought thither, there to officiate for him, and daily to minister to God; and let him repair God's churches every where, according to his abilities.

Churches to be built, endowed, and repaired by way of penance,

69. And further, if he be one of less substance, let him diligently do what he can according to his power. Let him pay tithes (b) of all that he hath in devotion to God, and travel as often as he can, and frequent the churches with his alms, and salute holy places with his light, (c) and give hospitality and meat and protection to them that want it, and afford fire and food, and bed and bath, and clothing and succour to poor men, if he can do it in any measure.

also occasional tithing.

THEODULF's Capitula.

994.

[Jo. Ecc. L. 994. 14. 35.]

14. Let no mass-priest wheedle to his own church a man that belongs to the district of another's church, nor instruct him to come to his church out of the shire (d) which belongs to another priest, and to pay him the tithes and rights which belong to the other. But let every one rejoice over him that comes to his church and thank God for it; because it is written, that no man should do that to another which he would not have done to himself, &c. Observe who opposes this and contemns our instruction. Further, let him incur one of these (two punishments), he shall either forfeit his order, or else make rigid satisfaction according to the Doom-Book.

Tithes to be paid by every one to the mass-priest of his district; and priests enticing men to pay out of their district, to be punished.

35. They also that live by dealing are to be admonished that they do not so covet worldly gain, especially so as to lose life eternal. Without doubt they greatly err, who are more intent on worldly gain than on the salvation of their souls; and of these a wise man saith, they lose their inwards (d) by the way. The present life is what he called the way. But it is necessary that they hear the Apostle's doctrine: the Apostle saith, over-reach not one another in dealing, for (look well to it) God will be his own avenger of what is done to the wrong of others, or for any other cause. The same command

Tithe to be paid of their profit by mariners and landmen, and all that live by dealing.

(a) "Young men, says Mr. Somner, which he renders *Vicarios substitutos*. I conceive he could not mean *vicars*, in the present sense of the word, for there were not yet any impropriations. But the word signifies any *inferiors*. See Sir H. S's *Gloss. Juniores*." —Johnson, sed quære.

(b) This, says Johnson, was a voluntary tithing of all a man's estate, not a tithing of the fruits of the earth yearly renewing.

(c) Lamp or candle.

(d) "By this it is evident that bounds of parishes were not yet settled by law, or established by custom; and as the diocese was called the bishop's shire, so the houses and vills next adjacent to a little church, were called the priest's shire." —Johnson.

(e) Lat. *intima sui*.

994.

is given to mariners and to landsmen, and all that raise a profit to themselves by dealing, that they give God the tenth part, and give their alms out of the nine parts; so it is enjoined to all men, that out of the same craft from which they produce necessities for the body, they also produce necessities for their souls, which are better than the body.

1009.

Laws Ecc. and Canons at *Eanham*.

[1 Sp. Con. 517. Jo. Ecc. L. 1009. 10. 11. 12. 13. 14.]

Plough-alms to be paid within 15 nights after Easter.

Tithe of young by Pentecost, of fruits of the earth by Allhallows-mass. Rome-fee by Peter's-mass, church-scot at Martin's-mass. Light-scot thrice a year, soul-scot at the grave.

These are the ordinances which the English counsel-givers chose and enacted and strictly charged to be observed.

10. Let God's rights be paid every year duly and carefully; that is, plough-alms fifteen nights after Easter;

Tithe of young by Pentecost, and of all fruits of the earth by Allhallows Mass. (a)

And the Rome-fee by Peter's Mass, and the church-scot at Martin's Mass.

12. 13. And the light-scot thrice a year. And it is most just that men pay the soul-scot at the open grave.

14. And if a corpse be buried elsewhere out of the proper district (b), let the soul-scot then be paid notwithstanding to that minster to which it belonged, and let all God's rights be advanced with diligence as is requisite.

Soul-scot to be paid in the proper district.

1012.

[1 Sp. Con. 530.] 1012.

Let a penny or a penny's-worth be given for every plough, and let every one who has a family take care that every *himannus* give one penny.

1014.

King *ETHELDRED*'s Laws Ecc.

[Jo. Ecc. L. 1014. 1. 4.]

Tithe to be paid of all.

Tithe to be paid, the tenth acre as the plough goes.

1. Let every Thane pay tithe of all that he hath.

4. And we charge that every man, for the love of God and his Saints, pay the church-scot and his lawful tithe as he did in the days of our ancestors, when he did it best; that is, the tenth acre as the plough goes: and let every custom be paid for the love of God to the mother-church to which it belongs: and let no man take from God what belongs to him, and what our ancestors have granted.

1017.

King *CNUTE*'s Laws Ecc.

[1 Sp. Con. 544. Jo. Ecc. L. 1017. 8.]

Plough-alms to be paid 15 days after Easter; tithe of young by Pentecost, of fruits of the earth by Allhallows-mass.

8. Let God's rights be duly paid rightly every year; viz. plough-alms fifteen days after Easter, and tithe of young by Pentecost, and of the fruits of the earth by Allhallows'-mass: and if any one then will not pay his tithes in the manner we have commanded, that is, the tenth acre as the plough goes, let the King's reeve, &c. [*As in the third Law of King Edgar, ante, p. 312. 3.*]

[1 Sp. Con. 610.] *Canons of uncertain date.*

As tithes are to be paid by all obtaining food and raiment from labour in the fields and other labour, so is it to be done by those who follow trade for a live-

(a) "Therefore the tithe payer did in these days imbarn and thresh the tithe corn, and pay tithe of the grain."—*Johnson*.

(b) Sax. Shire.

lihood; for to every man God has given the art by which he lives, and every one ought to administer aid to his soul, which is most important, from the produce of that art by which he administers aid to the necessities of his body.

Supposed Laws Ecc. of King EDWARD the Conf.

1064.

1 Sp. Con. 619. [Jo. Ecc. L. 1064. 5. 8. 9.]

5. Whoever holds any thing of the church, or has his mansion upon church ground, shall not be forced to plead in any court but the ecclesiastical, although he have incurred a forfeiture, unless justice there fail, which God forbid.

Tenants of the church, or residents upon church-ground, to be impleaded only in Ecc. Court.

8. The tenth garb is due to God of all corn, and therefore to be paid. If any one keep a family of mares, let him pay the tenth colt. Let him that has one only, or two, pay a penny for every colt. So let him that has many cows pay the tenth calf; he that has but one cow, or two, a half-penny for every calf. Let him that makes cheese pay to God the tenth cheese: let him that does not, pay the milk every tenth day, likewise the tenth lamb, the tenth fleece, the tenth cheese, the tenth butter, the tenth pig.

Tithes how to be paid.

9. Likewise of bees the tenth of the profit; likewise the tenth of all things is to be given to God, who gives the nine parts, as well as the tenth of wood, meadow, waters, mills, parks, warrens, (a) fisheries, osiers, gardens, and negotiations: let him that detains it be constrained to pay it by the bishop's court, and by the king's, if that be necessary. (b) For the blessed *Austin* preached and taught this, and it was granted by the King, and Barons, and people. But afterwards many detained them by instinct of the devil, and priests being rich and negligent, did not care to be at the pains to get them, because they had sufficient maintenance. For there are now three or four churches in many places where then there was but one. And so they began to be diminished in value.

The Heads of a Council celebrated at Winchester.

1070.

2 Sp. Con. 12. [Jo. Ecc. L. 1070. 10.]

10. That laymen pay tithes as it is written.

Tithes to be paid.

The Heads of Lanfranc's Canons at Winchester.

1071.

2 Sp. Con. 12. [Jo. Ecc. L. 1071. 14.]

14. That tithes be paid by all.

Tithes to be paid.

King William I.'s Mandate for separating the Ecclesiastical Court from the Hundred Court.

1085.

2 Sp. Con. 14. [Jo. Ecc. L. 1085.]

William, by the Grace of God, King of the *English*, to *R. Bainard*, *G. of Magnerville*, and *Peter of Valoines*, and all my liege men of *Essex*, *Hertfordshire*, and *Middlesex*, Greeting,—

The jurisdiction of the Ecc. and Hundred courts separated.

Know ye, and all my liege men in *England*, that I have determined that the episcopal laws be mended (as having not been right according to the tenor of the canons, even to my time, in the realm of the *English*) by a common council, and by a council of my archbishops, bishops, abbots, and principal men of my kingdom: Wherefore I command and charge you by Royal authority, that no bishop nor archdeacon do hereafter hold plea in the hundred, according to the laws episcopal, nor bring those causes before the secular judicature, which concern the regimen of souls. But whoever is impleaded by

(a) *Vicariis*.

(b) This latter part seems to be a mere gloss.

1085.

the laws episcopal; for any cause or crime, let him come to the place which the bishop shall chuse and name for this purpose, and there make answer concerning his cause *and crime*; and not according to the hundred, but according to the canons and the laws episcopal, let him do right to God and the bishop. But if any one, being lifted up with pride, refuse to come to the bishop's court, let him be summoned three several times; and if by this means he be not brought to obedience, let him be excommunicated; and if it be necessary to enforce this, let application be made to the power and court of the King or sheriff; and he who upon summons refuses to come to the episcopal court, shall make satisfaction for every summons, according to the laws episcopal. This also I absolutely forbid, that any sheriff, provost, minister of the King, do any ways concern himself with the laws which belong to the bishop, or bring another man to judgment any where but in the bishop's court. And let judgment (a) be no where undergone but in the bishop's see, or in that place which he appoints for this purpose.

1102.

Anselm's Canons at Westminster.

2 Sp. Con. 23. [Jo. Ecc. L. 1102. 13. 21.]

Tithes to the
(mother) church
only.

13. That tithes (b) be given but to churches only.

Impropriations
how to be made.

21. That monks do not accept (of the impropriations) of churches, without the bishop's consent, nor so rob those which are given them of their revenues, that the priests who serve them be in want of necessities.

1126.

Archbishop Corboyl's Canons at London.

2 Sp. Con. 34. [Jo. Ecc. L. 1126. 4.]

Churches,
tithes, &c. not
to be accepted
without bishop's
consent.

4. That no abbot or prior or monk or clergyman accept a church, tithe, or any ecclesiastical benefice, of the gift or at the hand of a layman, without the bishop's consent. That if such be attempted, every such donation be null, and the offender liable to canonical punishment.

1127.

Corboyl's Canons at Westminster.

2 Sp. Con. 35. [Jo. Ecc. L. 1127. 9.]

Impropriations,
portions, or ec-
clesiastical be-
nefices (vicar-
ages) not to be
given or taken
without bishop's
consent.

9. We charge tithe, as the portion of God, to be paid in full, and forbid churches, or tithes, (c) or ecclesiastical benefices to be given or taken by any person without the consent of the bishop.

Legatine Canons at Westminster.

2 Sp. Con. 39. [Jo. Ecc. L. 1138. 516.]

1138.

Investiture.
Simony to be
punished.

5. Let no one accept a church, or any ecclesiastical benefice, from the hand of a layman. When any man takes investiture from the bishop, let him swear on the gospel, that he has neither given nor promised any thing for it by himself, or by any other person; else the donation shall be null, and both the giver and receiver liable to canonical punishment.

Tithe to be paid.

16. We charge all to pay their tithe of all their first-fruits, under pain of *anathema*.

(a) By judgment Johnson here understands *ordeal*.

(b) Ut decimæ non nisi ecclesiis dentur. Sp. This seems to intimate that the Norman lords had impropriated some tithes, and that the

synod intended to resume them.—Johnson. Seld. 226.

(c) As to the origin of portions, see Johnson.

Archbishop Richards' Selection of Canons.

2 Sp. Con. 105. [Jo. Ecc. L. 1175. 12. 13.]

12. *From the Decree of Pope Alexander the Third sent to the Bishop of Norwich.* (a) If vicars, in contempt of the faith and oath made to the parsons, lift themselves up against them, assuming to themselves a parsonage, and be legally convicted of it, or confess it, let them no longer be allowed to officiate in the same bishopric.

Vicars claiming a parsonage not to officiate in the same bishopric.

13. *From the Council of Rouen.* All tithes of the earth, whether of corn, of fruits of trees, or other fruits, are the Lord's, and are hallowed to him; but since many are now found unwilling to give tithes, we decree that, according to the order of the Pope, they be admonished three times to pay the tithe of grain, wine, fruits of trees, young of animals, wool, lamb, butter, cheese, flax, hemp, and of whatever is yearly renewed, and be laid under *anathema*, if they do not amend.

Tithes to be paid of whatever is yearly renewed.

Hubert Walters' Legatine Canons at York.

2 Sp. Con. 122. [Jo. Ecc. L. 1195. 13. 16.]

13. Since tithes are the tributes of needy souls, and ought by the law of God to be paid, the payer is not to diminish them: we ordain that due and accustomed tithes be yielded of such things as are yearly renewed in the most entire manner; so as they be in the first place paid to the church, and afterwards the wages of the harvesters, and of other servants, at the discretion of the payer, out of the nine parts.

Tithes to be paid of all things yearly renewing clear of servants' wages.

16. We forbid any layman to take a church or tithes to farm, either by himself alone, or in partnership with a clerk.

Tithes not to be farmed by laymen.

Hubert Walters' Canons at Westminster. (b)

2 Sp. Con. 126. [Jo. Ecc. L. 1200. 9. 13. 14.]

9. Whereas Abraham by deeds, and Jacob by promises, insinuate that tithes are to be given to God and his priests, and the authority of the Old and New Testament, and the constitutions of the holy fathers declare that tithes are to be paid of all things yearly renewing, we decree that they be accordingly paid in full, without any abatement for the wages of servants or harvesters. Let priests have power of excommunicating all withdrawers of tithes before harvest, and of absolving them according to the ecclesiastical form: We add to this sanction, that the tithes of all lands newly cultivated be paid to no other but the parish churches within whose bounds the lands so cultivated lie. Let detainers of tithes be anathematised according to the constitution of the council of *Rouen*, if upon a third admonition they do not make full satisfaction. Saving, &c.

Tithes to be paid of all things yearly renewing without abatement.

Withdrawers and detainers of tithes to be excommunicated.

Tithes of newly cultivated lands to be paid to the parish church.

13. Supported by the *Lateran* (c) council, we decree, that wherever there are so many lepers together as can build a church with a churchyard, and have a proper priest, they be allowed to do it; but so that they do no injury to old churches. And we ordain, that they be not compelled to pay tithes of their gardens, or for the feed of their cattle. Saving, &c.

Lepers, in what cases they may build churches.

Not to pay tithes of gardens, or agistment of their cattle.

14. We decree, according to the tenor of the *Lateran* council, that no Brothers Templars, nor any religious whatsoever, do receive tithes, (d)

Ecclesiastical benefices not

(a) These canons (12. 13.) are the 9th and 10th of Richard Wethershed. 1229. post. p. 320.

(b) Most of the provisions of this council appear to be copied from those of the *Lateran* council of Pope Alex. III. 1179.

(c) *Lateran* council, 1179. c. 23.

(d) Lay-patrons, before this council of *Lateran*, presumed to appropriate churches, and all or part of the tithes, to any religious bodies

of their own heads, without asking leave of the bishop or any one else. The canon of *Lateran* and this of *Hubert* were intended to put a stop to this evil, and they did it effectually. From this time forward bishops were always parties to such impropriations as were (too often) made, and clergymen were instituted in their benefices by them.—*Johnson*.

1200.

to be received by Templars or any religious whatever from lay hands without the authority of the bishop.

Priests to be presented by them to the bishop, for all churches not appropriated, to be accountable to the religious for the temporals.

Monks not to be placed singly in parish churches. Vicars instituted by the bishop in all impropriated churches.

churches, or any ecclesiastical benefices, from a lay hand, without the authority of the bishop; and that they relinquish what they have of late so taken. And we ordain that such of them as are under excommunication, or interdict by name, be avoided by all. Let them present priests to bishops for their churches which they hold not by an absolute right, (a) who shall be answerable to the bishops for their care of the people, and accountable to the religious for the temporals. Let them not presume to remove such as are already instituted, without the advice of the bishops.

15. Let not monks be placed singly in parish churches. And we decree, that in every church of monks or any religious appropriated canonically to their uses, a vicar be instituted by the care of the bishop, who is to receive a decent competency out of the goods of that church.

1222.

Archbishop Langton's Constitutions.(b)

2 Sp. Con. 181. [Jo. Ecc. L. 1222. 1. 12. 13. 14. 15. 16. 17. 46. 49. 51.]

Disturbers of the liberties of the church to be excommunicated, and all guilty of fraud in payment of tithes, or of undue exactions on the lands of the church.

The excommunication to be published four times in the year.

Rector and vicar of the same church not to exchange.

Benefice not to be created by assignment of a portion of a church.

Two rectors or parsons not to be in one church in future.

Nor two vicarages, except where division is ancient.

Vicar to minister personally, and to be fit shortly to be ordained priest.

1. We excommunicate all those who maliciously deprive churches of their rights, or unrighteously endeavour to infringe or disturb their liberties. And all that are guilty of wilful fraud in paying due and accustomed tithes to their own parish churches; that is, of the fruits of the earth, and of trees, of hay wherever it grew, of pannage of swine, garden herbs, bees, food of animals, and their young, wool, milk, cheeses, however made, and all things yearly renewing, fishing, hunting, mills, trade, handicraft, and other honest labors; and of all things due by law or custom; and all that aggrrieve the religious, clerks, or beneficed men, or their tenants, on the lands of the church with tributes or taxes for making walls, or dikes for carriages, or other undue exactions. Let this general excommunication be published by every parish priest in his holy vestments, with bells tolling and candles lighted, before the whole congregation, in the mother-tongue, on *Christmas, Easter, Pentecost, and Allhallows Day*.

12. (c) We strictly forbid any man to resign his church, and then accept the vicarage (of the same church) from his own substitute: because, in this case, some unlawful bargain may well be suspected. Let the one of them who presume to do this, be deprived of his parsonage, the other of his vicarage. And we judge it absurd, that he who is parson of a church should confer any part of that parsonage to another under the title of a parsonage; unless he first absolutely resign the whole benefice. Nor let it be allowed to any one to assign any portion of his church to another, under the title of a benefice, so as that it may be held with another benefice, to which the cure of souls is annexed.

13. To prevent spiritual bigamy, we strictly forbid, with consent of the council, that any church be committed to two rectors or parsons; and in churches where there are several parsons, let the portions of those that die, accrue to the survivors, till the whole come to one man: nor let two vicarages be in the same church, excepting where the division is ancient.

14. We ordain, that no bishop admit any one to a vicarage, unless he be willing personally to minister in the church, in which the vicarage is granted him, and be fit in a short time to be ordained priest. If he who has been ad-

(a) *Plexo jure.*

(b) Different in *Spel.*

(c) It may seem strange that any one should chuse to be vicar rather than rector; but as there might, in some particular cases, be other reasons for it, so there was one very apparent one, viz.—the *Lateran Council*, under

Innocent the Third, 1215, had forbid the holding of two churches, that is rectories, but not two vicarages, or a rectory and a vicarage. For though the *Lateran Canon* against pluralities was not yet put in execution here; yet the clergy were apprehensive that this would soon be done.—*Johnson.*

mitted

mitted refuse to be ordained priest, let him be deprived of the benefit of the vicarage.

1222.

Churches not above five marks a-year to be resided upon personally.

15. We ordain, that churches not worth above five marks a year, be given to none but such as will personally reside, and minister in the said churches: let them who do not, be deprived by the diocesan, after due admonition.

Estate of five marks per ann. at least to be given to the perpetual vicar, except in Wales.

16. Abundance often breeds neglect, indigence, beggary, to the scandal of our order: We, therefore, chusing the medium, ordain, that an estate which may be let to farm for five marks at least, be assigned to the perpetual vicar, excepting in those parts of *Wales*, where vicars are content with less, by reason of the poverty of the churches. Let the diocesan, after due consideration had of the value of the church, determine whether the parson or the vicar, or both together are to bear the charges of the church. Provided still that the arch-deacon be contented with one procuration, whether from one or both.

The bishop to determine whether parson or

vicar are to bear the charges of the church.

17. We determine that in every church, that has a large parish, there be two(a) or three priests, according to the largeness of the parish, and the estate of the church; lest one priest is sick, or disabled, divine offices, and the sacraments of the church, be withdrawn from the parishioners, especially such of them as are infirm.

In large parishes two or three priests in the church.

46. Let neither a canon regular, nor monk, take any church or manor to farm, that belongs to his own church, nor have any manor committed to his custody, unless he be an (b) obediential: Let the offender be corrected by his superior. Let not religious take any churches to farm, so as to claim any right after the death of the present parson: if they do, let them be punished at the discretion of their superior.

None but obedientials to take any manor of his own house to farm.

No religious to take any

churches to farm, so as to claim them after the death of the parson.

49. We ordain, that no churches belonging to particular parsons be let to farm, but for a just cause approved by the bishop, and to one in orders, of whom it may be presumed, that he will apply the fruits to good uses.

No private churches to be farmed but by those in orders

and only with the bishop's consent.

51. Let Jews be looked upon as debtors to the churches of the parishes wherein they reside, as to tithes and offerings.

Jews to be considered debtors for tithes to the church where they reside.

To give a good conclusion to all, we charge that the *Lateran Council*, celebrated by H. *Innocent*, the Pope, be observed by all, as to the payment of tithes and all other matters; and that the Constitutions thereof, together with these, be read and explained yearly in the episcopal synods, as also the excommunications publicly enacted in this synod, which are likewise to be read four times in every year in the parish churches.

Lateran Council of Pope Innocent to be observed.

These constitutions and the excommunications enacted, to be read four times in the year in parish churches.

Supposed Constitutions of Archbishop Langton.

[Jo. Ecc. L. 1223. 10.]

1223.

10. Let tithes, both predial and other, be paid entirely without difficulty or diminution, according to the canons. And we grant to every (c) parish priest that they have power of coercing the detainers of tithes within their parish, and of excommunicating them if they are contumacious after admonition: and

Parish priest may excommunicate contumacious detainers of tithes, which are to be paid without diminution.

(a) It appears, from the next section, that there was still but one presented clerk.

(b) All the officers of the monastery were called Obedientials.—Jo.

(c) The parish priest who officiated under

the rector or vicar, was a more proper person to censure the people for neglecting to pay tithes, than the rector or vicar himself, who was a party. See Const. of *Edmund*, 1236. 35. (post, p. 320).—Johnson.

let

1223.

Laymen not to prescribe against tithes, nor to deduct expenses.

let no layman by any length of time claim immunity from paying tithe, since, according to the Institutes of the Canons, no layman can prescribe in point of tithes: Let no deductions be made for expenses, especially in predial tithes.

1229.

Archbishop Wethershed's Constitutions.

[Jo. Ecc. L. 1229. 9. 10. Lynd. Const. Prov. 10.]

Vicars claiming a parsonage against their parsons to be deprived in that diocese.

9. 10. The same as the 12th and 13th of the 1st Archbishop Richard, ante, p. 317.

9. This, also, we have thought right to ordain respecting vicars, who are bound to their parsons by their faith and oath: that if, in contempt of the obligation of their faith and oath, falsely assuming to themselves a parsonage, they shall set themselves up against their parsons, if they be convicted by law of this, or confess it, they be not afterwards admitted to the execution of their office in the same diocese.

Tithes to be paid of all things which are yearly renewed.

10. All tithes of the land, whether of fruits of trees or other fruits, are the Lord's, and are hallowed to him: but because some are now found unwilling to give their tithes; we ordain, according to the order of Pope *Alexander*, they be admonished a first, a second, and a third time, that they pay, without diminution, tithes of grain, wine, fruits of trees, and the young of animals; of wool and of lambs, and cheeses, and of flax, hemp, and other which are yearly renewed. But if, after admonition, they do not amend, let them know that they are under anathema.

1236.

Archbishop Edmund's Constitutions.

2 Sp. 204. [Jo. Ecc. L. 1236. 23. 25. 26. 35. Lyndw. C. P. 10.]

Tithes not to be sold before Lady Day.

23. (a) Let no rector of a church subject to us presume to sell the tithes of his church [not yet become due(b)] before the Annunciation of the Blessed Mary; from which time the fruits of custom ought to go for the payment of the debts, and legacies [of the rectors, though they die before the fruits become due.(c)]

Annual chaplains ought not to be removed without reason.

25. (d) We admonish rectors of churches, that they do not endeavour to remove annual chaplains without reasonable cause, especially if they are of honest life, and have laudable testimony thereof.

Incontinence of parsons and parish priests.

26. (e) If scandal arise by reason of the incontinence of a parish priest, since the rector ought to be very watchful in this point, if we come to the knowledge of it by common fame or inquiry, earlier than by the denunciation of the rector, then shall he be punished, as privy, by the discretion of his superior. We pass the same sentence as to perpetual vicars; and we decree both parsons, that is rectors and vicars, as also parish priests, to be severely punished, unless they be vigilant in denouncing the excesses, and especially of incontinence, for which clerks have been found notorious.

Tithes to be paid without deduction.

35. (f) Concerning tithes we order this to be observed, that of all things which are yearly renewed(g) they be paid to the churches to which they are due, and especially those which are due by the divine law, or the approved custom of the place; so that the churches be not prevented from receiving the tenth part fully on account of the wages of servants or harvestmen. And we grant that detainers of those tithes, if upon the third admonition they do not reform

Detainers of tithes to be anathematized, and

(a) 27 Sp.

(b) By a constitution of *Peter Quevil*, Bishop of *Exeter*, A. D. 1287. If the incumbent lived to the first Sunday in *Lent*, he might give the tithes of next harvest. Sp. 2. 383. In the diocese of *Winchester* it was necessary that the rector lived till *Maundy Thursday*. ib. 451, 452.

(c) Not in *Speelman* or *Lyndwood*.

(d) 29 Spelm.

(e) 30 Spelm.

(f) 40. Spem.

(g) *Quæ per annum renovantur*.

their

their error, be anathematized by the chaplains of the places until they make fit satisfaction. [And when they who detain or subtract tithes come to confession, let them not be admitted; unless by themselves, or by the hands of their priests, they make competent satisfaction to him, to whom they are due.(a)] And let tithes, as well predial as other, be paid without difficulty or diminution, and in an entire manner, according to the Institutes of the Canons. And we grant that parish priests have power of censuring the detainers of tithes in their parishes, and of excommunicating them, if they are contumacious and do not reform upon admonition. And let no layman claim an immunity from payment of tithes by reason of any length of time whatever; since a layman, according to the Institutes of the Canons, cannot prescribe (against) tithes.(b)

1236.

if contumacious,
excommuni-
cated.

No layman to
prescribe
against tithes.

Legatine Constitutions of Otho.

1237.

2 Sp. Con. 233. [Jo. Ecc. L. 1237. 8. 9. 10. Lindw. 20.]

8. Since it is altogether improper to let churches to farm to laymen and to any clerks whatever for a long time, on account of the continuance of time which is used to be dangerous, and may be destructive to the church; We, strictly forbidding both, do ordain that churches hereafter be not at all given to farm to laymen, nor to ecclesiastics for above five years, nor after that time be taken again by the same men, unless some others come between. And that all may be safe, we ordain that the agreement for the farms be made in the presence of the bishop or archdeacon, and several instruments thereupon written, one whereof may remain with them.

Churches not to
be farmed by
laymen, nor by
ecclesiastics for
more than five
years.

9. We have somewhere heard it happened, that a rich church being vacant, which a certain man wished to have, but dared not accept as parson, lest he should by law be deprived of other benefices which he had, cunningly procured, that the church should be granted to him in perpetual farm, so that he should pay some trifle out of it to another who was parson in name, and retain all the rest to himself. Wherefore, we ordain by this edict, that no church, prebend, or other subject of ecclesiastical revenue be granted to any one in perpetual farm, either in whole or in part, under any colour whatever, decreeing that any attempt to the contrary shall be wholly null and void.

Churches not to
be let in perpet-
ual farm.

10. We ordain that no one for the future shall be admitted to a vicarage, unless he be already ordained priest, or at least a deacon, who may be duly ordained in the next Ember week, who, renouncing other benefices, if he have any with cure of souls, shall swear to reside there in person constantly: otherwise we decree his vicarage to be void, and to be given to another; and so that trick be provided against by which a small portion being after assigned to one under the name of a parsonage, the church was given to another under the pretended name of a vicarage, who was afraid of losing other benefices, if he accepted it as parson. But of vicars already instituted, who are not priests, (since vicars are bound personally to serve their church,) we decree that they get ordained within the year at least. But if they themselves are the occasion of their not being ordained within the year (as aforesaid), we decree that thenceforth they be deprived of their vicarages; and as to their residence, we decree the same as we have before decreed concerning those hereafter to be instituted.

Vicars to be
ordained
priests, and to
reside on their
benefices.

Constitutions of Archbishop Gray (of York).

1650.

2 Sp. Con. 290. [Jo. Ecc. L. 1250. 2.]

2. Because by means of divers customs in demanding tithes in divers churches, great disputes, scandals, and malice, arise between rectors and their parishioners, our will is, that in all parish churches throughout our archbishopric or archdeaconry there be an uniform demand of tithes and other ecclesiastical

(a). Not in Spelman.

(b). *Decimas prescribere non possit.*

1250.

Tithe of all hay
to be paid, and
of lambs and
wool.

Wool.

Milk.

Cheese.

Mills.

Pasture.

Fishings. Bees.

Handicrafts.

Merchants.

Carpenters.

Smiths.

Weavers.

Masons.

Victuallers.

Of their wages.

Mortuary.

Parishioners
refusing to pay
tithes to be
admonished,
and excommu-
nicated if
necessary.

Rectors, vicars,
and curates, not
demanding
tithes effectually
to be suspended.

profits, unless the parishioners will redeem them at a competent rate. And our will is, that the tithe of hay be paid wherever it grows, whether in great meadows or less, or in the heads of plough lands, (a) and to the advantage of the church. As to the produce of cattle, (b) our will is, as to lambs, that for six or under, so many halfpence be paid; for seven lambs or more, the seventh lamb; but so that the rector who receives the seventh lamb for tithe, pay back three halfpence; [he who receives the eighth a penny], the ninth a halfpenny; or else the rector may chuse to stay till the next year, and receive the tenth; and let him that so stays always insist upon the second, or at least, the third best of the beasts of the second year, and this on account of the year's delay. This is also to be applied to the tithe of wool. If the sheep have fed in one parish in the winter, in another during summer, the tithe is to be divided. If any buy or sell sheep between the winter and summer, and it be certain from what parish they came, the tithe is to be divided, as in case a thing belong to two several houses; (c) but if this be not certain, let that church within whose bounds they are shorn, have the whole tithe. As to milk, our will is, that the tithe of it be paid, while it lasts; viz. of cheese in its season, of the milk itself in autumn and winter, unless the parishioners will redeem it, and that to the advantage of the church. Our will is, that tithe be paid in full of the profit of mills; we ordain, that tithes be paid of pastures of all sorts, whether common or not common, according to the number of the cattle, and the days, if for the advantage of the church. We ordain, that tithes be demanded and paid in a due manner of fishings, and bees, as of all other things yearly renewing, which are got by lawful means. We ordain that (personal) tithes be paid of handicrafts and merchants, and of the gains of negotiation, whether of carpenters, smiths, and weavers, masons, victuallers, and all other stipendiaries, that is, let tithes be paid of their wages, unless they are willing (with the rector's consent) to make some certain payment for the benefit, or the lights of the church. In demanding the principal legacy, let the custom of the province, with the possession of the church, be observed; but so that the rector, vicar, or annual chaplain have the fear of God before his eyes in making the demand. But because we hear there are some who are unwilling to pay tithes, we ordain, that parishioners be admonished once, twice, and thrice to pay tithes to God, and the church; and if they persist in their refusal, first let them be suspended from entrance into the church, and so be compelled, if need be, by church censure to the payment thereof. But when they crave a relaxation and absolution of the said suspension, let them be sent to the ordinaries of the place to be absolved, and punished in due manner. The rectors, vicars, and annual chaplains of churches who do not demand the tithes effectually in manner aforesaid, either for fear or favour of men, or for want of the fear of God, shall be involved in the penalty of suspension, till they pay half a mark to the archdeacon for their disobedience.

1268.

(d) Legatine Constitutions of Othobon.

2 Sp. Con. 277. [Jo. Ecc. L. 1268. (e)22.]

Alienations by
appropriation
restrained.

22. Because the decrees of the holy fathers and of the Roman pontiffs do carefully forbid alienations of the holy church, we, as we are in duty bound, imitating them to the best of our power, strictly forbid bishops to confer a church subject to them on another bishop, monastery, or priory by right of appropriation, unless he to whom he confers it, be so oppressed with poverty, or unless there be some other lawful cause, so that the appropriation may be

(a) *Sive in cheviciis.*(b) *De nutrimentis animalium.*(c) *Sicut de re quam acquiritur ex militiâ.*
Sp.

(d) I have purposely omitted the Constitutions of Archbishop Boniface (made A. D. 1261,) as going beyond the received notions of even those days. Johnson says, "Scarce

"any thing more unreasonable could be devised by the art, or blind fury of men than most of them." Those, however, who are anxious to see how far such attempts have been carried, will read them with considerable interest.

(e) Spelman places these A. D. 1248.

rather

rather esteemed agreeable to piety, than contrary to law; and if any appropriation be made contrary to the premises, let it be void, and of no effect *ipso jure*; but let it by all means be revoked by the bishop who made it, so far forth as he proceed *de facto*. Some, also, that they may swallow the whole of the profit of a church that used to be under a rector, but is now appropriated to them, leave it destitute of a vicar; or if they do institute a vicar, leave him so small a portion that it is insufficient for himself and for bearing the charges of the archdeacons, and other burdens; by which means, what was granted as alms, goes to the thirst of avarice, and becomes a robbery; therefore, providing wholesome remedies in this respect, we ordain and strictly charge, that all religious, exempt or not, the *Cistercians* and all others who have churches appropriate, if vicars have not been placed in them, do within six months present vicars to the diocesans who are to institute them. And let the religious take care to assign them a sufficient portion according to the value of the churches; or else from thenceforth let the diocesans take care to do it. And we ordain that such as have churches to their own use, do build houses in the parishes belonging to them, or rebuild, and preserve them where they have been formerly built, for the reception of the visitors. And we charge that the premises be done and observed by bishops as well as others who have churches for their own use.

1268.

Vicars to be instituted in all appropriated churches, and a sufficient portion assigned to them.

42. (Lind. 1 J. A.) Seeing, that for monks or canons regular to reside alone upon churches or manors, is as indecent as dangerous to their souls, we firmly and strictly order, that abbots and priors do not cause or allow monks so to remain. But if there be any, let them be recalled without the danger of delay to the convent, or let another be joined to each. Otherwise, let the abbots and priors themselves be suspended from their office and benefice till it be supplied. If, however, they by chance have poor churches, which are not sufficient to maintain two, let them be served by lay clerks, so that churches be not deprived of due service, nor the integrity of religious discipline violated.

Religious not to be resident our manors or churches of their monasteries alone.

Archbishop *Winchetsey's* (of Canterbury) Constitutions at *Merton*.

1305.

[Jo. Ecc. L. 1305. 1. 2. 6.]

1. Because on account of different customs in demanding tithes in divers churches, great quarrels, disputes, scandals, and hatred arise between the rectors and their parishioners; we will and ordain that there be a uniform demand of tithes and ecclesiastical profits in all the churches throughout our province.

Customs of demanding tithes different; to be uniform.

In the first place, we will, that tithes be paid of fruits of the earth without deducting the expenses, entire and without diminution: and of the fruits of trees, and all seeds and garden herbs, unless the parishioners make a competent redemption. We will also that tithe of hay be demanded, and (as is decent and expedient) to be paid to the church, wheresoever it be growing, whether in great meadows, or in small, or in roads.

Tithes to be paid of fruits, seeds, and garden herbs.
Hay.

Concerning the young of animals, viz. lambs, we decree that for six lambs six halfpence be paid for tithe: if there be seven lambs, let the seventh be given to the rector for tithe. So that, however, the rector who receives the seventh lamb give back to the parishioner three halfpence: the eighth, a penny; the ninth, a halfpenny, or let the rector wait till the next year, if he will, and receive the tenth; and let him that waits always take the second or third best at least of the lambs of the second year, and this for the year's delay. So let him who gives the seventh or eighth for tithe, not give the worst, but the third best at least. And so it is to be understood of the tithe of wool. But if the sheep are kept in one place in summer and another in winter, the tithe is to be divided. So if any one buy or sell sheep, between the summer and winter, and it is certain from what parish they came, the tithe is to be divided, as of a thing which has two homes. But if it be uncertain, let that church have the whole tithe, within whose bounds they are shorn.

Lambs.

Wool.

Milk.

Of milk, our will is, that tithes be paid while it lasts; that is to say, of cheese

1305.

Mills.

Pastures.

Commons.

Fisheries. Bees.

Manufactures,
trade, carpen-
ters, masons,
smiths, mer-
chants, shoe-
makers, tailors,
&c.

Mortuary.

Refusers of
tithe to be
punished.Sheep fed in
different pa-
rishes.Tithes of agist-
ment to be paid
by the owners
of pastures.Tithes of lambs,
calves, foals,
&c. to be paid
proportionably.Where less than
ten according to
the custom.Sheep killed or
dying.

cheese in its season, and of milk in autumn and winter ; unless the parishioners will make a competent redemption, to the value of the tithe and the advantage of the church.

We will, also, that tithes be demanded of the profits of mills, and that they be paid faithfully and to the full value of the profits, unless the owners redeem them at the full value.

We ordain, also, that tithes be faithfully paid of pastures and feedings, as well common as not common, and according to the number of animals and the days, as may be advantageous to the church ; so that, however, neither the lords nor parishioners may have just cause of complaint.

We decree, also, that tithes be paid in due manner of fisheries and bees, as of all other things lawfully acquired, which are renewed yearly.

We decree, also, that personal tithes be paid of manufactures, and the profits of trade by merchants and others ; and also of carpenters, masons, smiths, merchants, shoemakers, tailors, and all other workmen, who ought to pay tithes of their works, unless the workmen are willing to give something certain for the benefit, or for the lights of the church, and this if the rector of the church please. In the demand of the principal legacy or mortuary, we will, that the custom of the province, and (the mode of) possession by the church be observed ; so that the rector, vicar, or annual chaplain have the fear of God before his eyes in making the demand. But because many are found unwilling to give tithes of their own accord, we decree, that parishioners be thrice admonished to pay tithes faithfully to God and the church : and if they do not amend, first let them be suspended from entrance into the church, and afterwards, if need be, compelled to the payment of tithes by church censure. But when they request a relaxation or absolution of the suspension, let them be sent to the ordinary of the place to be absolved, or in due manner punished. Let the rectors of churches, or vicars, or annual chaplains, who (laying aside the fear of God) do not effectually demand the said tithes in the aforesaid manner, on account of fear or favour of men, be suspended, till they pay half a mark of silver to the archdeacon of the place for their disobedience.

2. Because as we have heard many controversies arise concerning tithes and the feed of cattle between rectors of churches, by reason of the removal of cattle from parish to parish at divers seasons of the year : we, desiring to prepare the way of peace, do ordain and decree, that the tithes of cheese, wool, and milk, be entirely paid to those churches in whose parishes the sheep feed and couch for a constancy from shearing time to *Martinmas*, [in proportion to that time,] although the sheep be afterwards removed, and shorn in another parish. And to prevent fraud, we charge in the case aforesaid, that before the sheep be removed from the pastures, or sold, payment of tithe be secured to the rectors : and if within the said space they are removed into several parishes, let each church receive tithe in proportion to the time, no account being had of any space less than thirty days. If for the whole of the aforesaid time they couch in one parish and feed constantly in another, let the tithe be divided between the churches. But if after *Martinmas* they are carried to other pastures, and till shearing time are fed in one or more parishes either in the pastures of their lords, or any others, taking account of the number of sheep, let the pastures be valued, and according to the value of the pastures let the tithes be taken from the lords of the pastures. Let tithes of the milk and cheese arising from cows and goats be paid where they couch and feed : but if they feed in one parish and couch in another, let the tithes be wholly divided between the rectors. Let lambs, calves, foals, and other titheable young of animals be tithed proportionably with a regard to the several places where they are conceived, born, and fed, and the time they have been in each. We leave to the custom of the places, what is due, where on account of the small number of sheep or cows there is not milk sufficient to make cheese ; and what for lambs, calves, foals, fleeces, geese, or other such things of which on account of the small number the tenth cannot be paid. If sheep are killed, or die by chance, after *Martinmas*, let the tithes be paid to the parish church. And if strange sheep are

are shorn in a parish, let the tithe be delivered to the rector of the church there, unless it can be sufficiently shewn that such satisfaction was made for the tithe elsewhere, as may lawfully prevent the payment there.

1305.

Tithe of wool to be paid where shorn (though divided afterwards).

6. Whereas, by the command of holy Scripture, tithes are to be paid entirely and without diminution of all things that are renewed in the year, without excepting any time, it is allowed to every parish chaplain, rector, or vicar, to compel their parishioners by church censure to pay tithes: we command and strictly enjoin all and singular rectors, vicars, and parochial chaplains, and curates of parish churches, appointed in our province, by virtue of obedience, that they diligently admonish, and effectually persuade, and that each in his parish do admonish and persuade all and each of the aforesaid parishioners to pay to their churches the undermentioned tithes entirely and without diminution; viz. tithe of milk from the time of its first renewing, as well in the month of August as in other months, also of the profit of woods, pannage of woods, and all other trees if sold; vivaries, fisheries, rivers, ponds, trees, cattle, pigeons, seeds, fruits, and warrens, fowling, gardens, curtilages, wool, flax, wine, and grain; turf, in places where it is made and dug; eggs of swans, fowls, geese, and ducks; hedgerows, bees, honey and wax, mills, huntings, manufactures, and merchandize; also of lambs, calves, and foals, according to their value, and hereafter let them make competent satisfaction of all profits of other things to the churches, whereunto they belong by law, deducting or retaining no expenses on account of paying tithes, except of manufactures and merchandise. But if, out of contempt, they disobey their admonitions, let them compel them to the payment of such tithes, by the sentences of suspension, excommunication, and interdict. (a)

Tithes.

Milk.

Woods, pannage, vivaries, fisheries, rivers, ponds, trees, cattle, pigeons, seeds, fruits, warrens, fowling, gardens, curtilage, wool, flax, wine, grain, turf, eggs, hedges, bees, honey, wax, mills, huntings, manufactures, merchandize, lambs, calves, foals.

Archbishop Mepham's Constitutions.

2 Sp. Con. 495. [Jo. Ecc. L. 1328. 7.]

1328.

7. Some, not considering that the Almighty, to whom belongs the earth and its fulness, and all who dwell in it, has ordered tithes to be rendered to him as a sign of his universal dominion, and has assigned them to the clergy for his worship, do maliciously hinder or cause the ecclesiastical persons to whom the taking of tithes belongs, or their servants, to be hindered from having free ingress and egress into and out of the farms from which the tithes arise, in order to collect, keep, and carry them away where they will. And others carry away and consume or damage the said tithes, or cause them to be carried away, consumed, or damaged, unless gloves or shoes or some such thing be given to or promised to them. We therefore excommunicate, &c.

Tithes.

Ingress and egress.

Supposed Constitutions of Archbishop Mepham.

2 Sp. Con. 499. A. D. 1328. [Jo. Ecc. L. 1230. 8.]

8. Let no clerk farm out an ecclesiastical benefice to a layman, nor sell his tithes before they are separated. If any clerk in an allowed case will commit his benefice to another, we ordain, that it be committed to such a one as is able and willing to uphold the buildings belonging to the church, and to bear other episcopal and archidiaconal burdens. And let him who accepts of another man's benefice be presented to the archdeacon and (b) chapter of the place, and be fully instituted as general procurator to that benefice for the time there agreed be between them.

Benefice not to be farmed by a layman.
In what manner to a clerk.

(a) Enforced by Archbishop Mepham, 2 Sp. Con. 502.

quarterly assembled were the archdeacon's chapter."—Jo.

(b) "The clergy of the archdeaconry

1342.

Archbishop *Stratford's* Extravagants.

2 Sp. Con. 574. [Jo. Ecc. L. 1342. 4.]

Part of tithes of appropriate benefices to be given to the poor.

4. Whereas ecclesiastical men are entrusted with the dispensing of tithes, and other things belonging to the church, that the poor by their prudent management may not be defrauded; yet the religious of our province having churches appropriate do so apply the fruits of them to their own use, as to give nothing in charity to the poor parishioners, being regenerate sons of the churches so appropriated, to whom they are bound to do this more than to strangers: wherefore they, acting too covetously, do make such as owe tithes and ecclesiastical dues not only indevout, but invaders, disturbers, and destroyers, to the danger of their own souls, and theirs, and to the scandal of many. Therefore, with the approbation of this sacred council, we ordain, that the said religious, having ecclesiastical benefices appropriate, be compelled by the bishops every year to distribute to the poor parishioners a certain portion of their benefices in alms, to be moderated at the discretion of the bishops in proportion to the value of such benefices, under pain of sequestration of the fruits, and profits thereof, till they yield a reasonable obedience in the premises.

1343.

Archbishop *Stratford's* Constitutions.

2 Sp. Con. 583. [Jo. Ecc. L. 1343. 3. 4. 5.]

Churches how to be farmed.

3. Although *Otho* and *Othobon*, of good memory, formerly legates of the Apostolical See in *England*, took care by their Constitutions, that churches should not be farmed out to laymen; nor to clerks for above five years; yet some, by a fraudulent device lately contrived, do let out their churches to laymen, and sometimes to women; or to clerks without the diocesan's license, contrary to those and other constitutions, and for a colour, insert the name of a clerk together with that of a layman, who is party to the contract, in the instrument made for letting such churches; although the clerk there named be not a party to the contract: and the said laymen, by means thereof, do dwell in the manses, and houses of the churches so let to farm, together with their wives and children, and families, and publicly exercise trades in them, and do other unbecoming business there, to the scandal of the people, and the damping of their devotion, and to the defrauding of the churches, and lessening of their rights; therefore, with the approbation of the provincial council, and by way of addition to the said constitutions, we ordain, that from this time forward, so often as an ecclesiastical benefice is farmed out to a clerk and a laic in our province, or the name of a clerk is inserted with that of a laic in the instruments made for this purpose; or when a clerk is farmed to be the farmer but is not; or if laics in their own names collect the fruits of benefices farmed, and convert them directly to their own use, that such contracts be of no force, and that by virtue of them one party be not obliged to the other. But we will that they who, from this time forward, do so let and take benefices to farm, be obliged to pay the third part of the fruits thereof, the sum to be made up between them, if the lessee be solvent; if not, the whole to be paid by the lessor, to the fabric of the cathedral church of the place, notwithstanding that the name of a clerk was inserted. And because the religious and other appropriators of benefices in our province affirm that they are not bound by the constitutions aforesaid, we ordain, with the approbation of this council, that if they let to farm their benefices, or their portions of tithes and profits in them, which they enjoy by virtue of their appropriations, either to clerks without license of the diocesan, or to laics in any manner whatever; or are guilty of any excess whatever, contrary to the tenor of this or other constitutions, they be for the future punished in manner aforesaid.

Tithes to be paid without deducting wages of harvesters, and without any fraud.

4. Men blinded with damnable error cannot escape perdition of their souls while they pay the tenth sheaf to the harvesters for their labour, and by a great mistake in counting, they leave out that sheaf in their reckoning, and so pay the eleventh instead of the tenth; and insist, that they ought to pay the hire

of

of their labourers in the harvest, (a) before the corn be tithed, in contempt of the command of the Old and New Testament. The vicious malice of some laymen has lately invented, that setting out some tenth sheaves, but not marked for tithes in their lands, they call the servants of ecclesiastics taking away as tithes the sheaves or other things so set out, thieves; and cause them to be arrested as thieves, and disturb and disquiet them and their masters on account of the taking and carrying away such tithes; and some of these implead ecclesiastics and their servants in the secular courts, and put them to great trouble and charge for carrying their tithe of corn and hay, or other things, through their grounds; others permit them only to go circuitous ways into and from their farms, making the roads for their carriages difficult to be passed, contrary to ecclesiastical liberty; others do not permit the tithes, though set out and marked, to be carried off their lands, so long as any of their own corn remains there, but knowingly suffer it to be trampled upon and consumed by their own and by other men's cattle; and cause many impediments to be made to the paying, collecting, and taking away of them, to the violation and manifest prejudice of ecclesiastical liberties, and laws, and the peril of their own souls. We, therefore, to obviate the damnable attempts of perverse men by wholesome remedy, by the advice of this council do pronounce them to be involved in the greater excommunication, who are guilty of excess in the premises, or in any of them within our province from this time forward; and such as command or procure such unlawful things to be done, or approve of them, by whose wicked tricks, the right approved custom, or liberty of the church is diminished, or any injury, damage, or vexation offered contrary to ecclesiastical liberty; and we specially reserve the absolution of such to the diocesan of the places, except at the point of death.

1343.

5. Although God has promised abundance of all things to those that duly pay their tithes; yet to our grief, some of our province, contrary to the doctrine of the Old and New Testament, refuse to pay tithes to God and the churches to which they are notoriously due, of their *silva cædua*, and of the wood cut off from cæduous trees, (which costs less labour than the fruits of the earth,) on account, that they have not paid such tithes in time past, which they judge to be lawful, as established by long custom; and they also make a doubt of what is to be called cæduous wood: We, therefore, considering, that if the church has for a long time been defrauded of her right, the crime is not lessened, but increased, and that famine and want of all things oppress them who do not duly pay such tithes, declare by provision of this council, that *silva cædua* (b) is that which, whatever be the kind of tree, is kept to be felled, and which also being cut grows again from the stumps or roots; and that a real predial tithe is to be paid of it to the mother churches; and that the possessors of such woods be compelled by ecclesiastic censure, according to the canons, to the payment of the tithes of the wood itself when felled in them, as of hay and corn.

Silva cædua.

Archbishop Zouch's (of York) Constitutions.

1347.

[Jo. Ecc. L. 1347. 3.]

3. This nearly resembles the 4th of Archbishop Stratford, ante, 326.

Archbishop Langham's Constitutions.

1367.

[1 Jo. Ecc. L. 1367. 1.]

1. We have thought, by the approbation of this present council, to explain the statute of our predecessor Robert, of happy memory, concerning mortuaries, which some have perverted to a wrong sense. Our said predecessor was very

Mortuaries to be a compensation for tithes withdrawn.

(a) Sed verum est quòd mille expensæ circa talia sunt deducendæ, ut patet. Extra eo c. cum homines.—(Lyndw. 188.)

(b) Sylvam cæduam illam fore quæ cujuscunque existens generis arborum in hoc habeatur ut cædatur, aut est habilis ad cædendum.—Sp. diligent

1367.

diligent in consulting the salvation of souls; because he considered that the laity of both sexes who were subject to him had grievously offended by unjustly detaining their tithes and oblations, sometimes through ignorance, sometimes through negligence; and he, prudently considering that the sin is not forgiven till what has been taken away be restored, did wholesomely ordain, that, as a compensation for tithes so withdrawn, the second best animal of the deceased should be paid to the injured church, although he have not inserted the reason into the statute. But now, because, through occasion of this statute, disputes, which we desire to extinguish, often arise between rectors of churches and their parishioners, we think fit to explain it by a synodal interpretation, viz. If the deceased had three animals, or more, of any sort, among his chattels, the best being reserved to the lord to whom it is due, the next best be reserved for the church, (from which he received the sacraments when he was alive,) without any fraud, deceit, or contradiction whatsoever, as a recompense for the withdrawing his tithes, as well personal as predial, as also of his oblations for the delivery of his own soul. But if there be but two animals among the chattels of the deceased, the church in mercy remits all actions on account of a mortuary.

1466.

Archbishop Nevil's (of York) Constitutions.

2 Sp. Con. 702. [Jo. Ecc. L. 1466. 2. 11.]

Silva cædua.

2. The same as the 5th of Archbishop Stratford, 1343, for the tithe of timber trees.

Tithe of coal and saffron.

11. The same with the 6th of Robert Winchelsey, in the year 1305, beginning at *Whereas therefore by the command of Holy Scripture, &c.* the most remarkable difference is, that this constitution does not mention *tithe of wine*, as the other does, but speaks of the *tithe of coals where they are dug*, which is not in the other, and likewise of *saffron*. It ends with these additional words, *a contrary custom in any wise notwithstanding, for that does not lessen sins, but increases them.*

LIST

OF

MONASTERIES.

BY the 26 H. 8. c. 3. entitled "*The Bill for the first-fruits, with the yearly Pensions to the King,*" it was enacted that the first-fruits of all dignities spiritual should be granted to the King, for the value of which commissioners were authorised to search; and by sect. 9. it was further enacted, "That the King's Majesty, his heirs and successors, kings of this realm, for more augmentation and maintenance of the royal estate of his imperial crown and dignity of supreme head of the Church of England, shall yearly have, take, enjoy and receive, united and knit to his imperial crown for ever, one yearly rent or pension, amounting to the value of the tenth part of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, now appertaining or belonging, or that hereafter shall belong to any archbishopric, bishopric, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, or other benefice or promotion spiritual, of what name, nature or quality soever they be, within any diocese of this realm, or in Wales:" and by sect. 10 & 11. "That the said yearly rent and pension shall be taxed, rated, levied, perceived and paid to the King's use, his heirs and successors, in manner and form hereafter to be declared by this act; that is to say, That the chancellor of England for the time being shall have power and authority to direct into every diocese in this realm, and in Wales, several commissions in the King's name, under his great seal, as well to the archbishop or bishop of every such diocese, as to such other person or persons as the King's highness shall name and appoint, commanding and authorising the said commissioners so to be named in every such commission, or three of them at the least, to examine, search and inquire by all the ways and means that they can by their discretions, of and for the true and just whole and entire yearly values of all the manors, lands, tenements, hereditaments, rents, tithes, offerings, emoluments, and other profits, as well spiritual as temporal, appertaining or belonging to any archbishopric, bishopric, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, or to any other benefice or promotion spiritual within the limits of their commission, with a clause to be contained in every such commission, that the said commissioners, or three of them at the least, shall deduct and allow in the making and rating of the said yearly values of the premises these deductions following, and none other; that is to say, the rents resolute to the chief lords, and all other annual and perpetual rents and charges, which any spiritual person or persons been bounden yearly to pay to any person or persons, to their heirs and successors for ever, or to give yearly in alms, by reason of any foundation or ordinance, and all fees for stewards, receivers, bailiffs and auditors, and synods and proxies, with another clause to be also contained in every such commission, That the said com-

A yearly tenth of all spiritual livings given to the king.

Commissions shall be awarded into every diocese to inquire of the value of every spiritual living.

Deductions to be defalked out of spiritual livings.

missioners,

The commis-
sioners shall be
sworn indiffer-
ently to execute
their commis-
sions.

missioners, or three of them at the least, shall certify under their seals, at such days as shall be limited by the said commissions, as well the whole and entire value, as the deductions aforesaid, of every archbishopric, bishopric, abbacy, monastery, priory, archdeaconry, deanery, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free chapel, and of all other benefits and promotions spiritual. And it is ordained and enacted by authority aforesaid, That the said commissioners that shall be so appointed, or three of them at the least, shall have full power and authority to do, accomplish and execute the effects and contents of their said commissions in every behalf; and that every the said commissioners, before they shall execute their said commission, shall receive and take a corporal oath before the lord chancellor, or before such other as shall be appointed by the said chancellor by the king's writ of *Dedimus potestatem*, that they shall diligently and truly, without favour, affection, fraud, covin, meed, dread or corruption, do, fulfil and execute the whole effects and contents expressed in every such commission within the limits thereof to their cunning, wits, and uttermost of their powers. And by sect. 24. The prior of St. John's of Jerusalem, and all commanderies belonging thereto were specially included. By virtue of the powers given by this statute, the following writ issued:—

"Henricus Octavus Dei gratiâ Angliæ et Franciæ rex, fidei defensor, dominus Hiberniæ et in terrâ supremum caput Anglicanæ Ecclesiæ, dilectis et fidelibus suis, &c. salutem. Sciatis quod nos de fidelitatibus et providis circumspeditionibus vestris plenius confidentes, assignavimus vos quinque, quatuor, vel tres vestrum, dantes vobis ac quinque, quatuor, et tribus vestrum, vel in majori aut minori numero prout per discretiones vestras vobis melius visum fuerit, plenam potestatem et auctoritatem ad inquirendum, scrutandum, et examinandum, viis, modis, et mediis, quibus melius scire poteritis infra comitatum vestrum, de omnibus et singulis articulis et instructionibus præsentibus annexis faciendumque et exequendum cum effectu prout in eisdem articulis plenius continetur. Et ideo vobis mandamus, firmiter injungentes quod circa premissa effectualiter intendatis ac ea faciatis et exequamini diligenter, ita quod veritatem de eisdem articulis et de eorum singulis habere poterimus, absque favore, fraude, dolo, corruptione seu covinâ, prout vos inde nobis respondere velitis: Et quicquid in premissis feceritis thesaurario, cancellario, camerariis et baronibus de scaccario nostro, inde et de omnibus circumstanciis eorundem prout articuli prædicti in se exigunt et requirunt in octavis sanctæ Trinitatis proximè futuris sub sigillis vestris distinctè et apertè in debita forma in scriptis certificetis, et hæc sub periculo incumbenti nullatenus omittatis. Damus etiam præterea vobis plenam potestatem ad tales et tantos scribas, registrarios, et eorum deputatos ac receptores, auditores, ac alios officarios, ministros, quorumcumque prælatorum et clericorum ecclesiæ coram vobis convocandos et examinandos, prout vobis pro meliore executione articulorum prædictorum videbitur expedire. Mandamus insuper tenore præsentium omnibus et singulis vicecomitibus, majoribus, ballivis, registrariis, ac aliis officiariis et ministris, tam nostri quam aliquorum prælatorum seu clericorum quorumcumque, ac aliis omnibus et singulis fidelibus subditis nostris quibuscumque quod vobis in executione præmissorum de tempore in tempus intendentes sint et auxiliantes prout decet. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westmonasterium tricesimo die Januarii, anno regni nostri vicesimo sexto. PEXSALL."

And also the following instructions to the commissioners for the taking of the survey:—

INSTRUCTIONS devised by the Kyng's Hignes by the advise of his counsaill for knowlaige to be hadd of the hole true and just yearly values of all the possessions, mannors, londys, tenements, hereditamentys, and proffits, as well spirituall as temporall, apperteynyng to any manner of dignitie, monastrie, priorie, churche collegyatt, churche conventuall, personage, vicarige, chauntrie,

chauntrie, ffree chapell, or other dignitie, office, or promocion spirituall, within this realme, Walys, Calice, Berwyk, and marches of the same, as well in placys exempt as not exempt; whiche his pleasure ys, that suche as shall have charge by his commission to survey the same, shall effectually with all uprightness and dexteritie followe and ensue; as they will answere unto hys Majestie at their perrell.

FIRSTE, it is ordeined that severall commissions shall be made into every dioces, shere, and place within thys realme, and into Walys, Calys, Berwik, and the marches of the same, where yt shall please the Kyng's Hignes to lymitt and appoynt, and to suche nombre of persons as shall plesse hys Majestie to assigne, and that to every of the same commissions theis articles, assigned with his Gracy's hand, shall be annexed.

Item, that the commissyoners, after the sight of the commissyon with thes artycles annexed, shall ffirst sende for suche and so many of the busshoppys and archideacons, scribes and ministers, within the lymytts of ther commissyon, as they shall think mooste convenyent, ffor knowlaige to be hadd of the nombres and namys of all denryes rurall within the lymytts of ther commissyon, and in whoys dioces or jurisdiction the said denries ben, and howe many dignities, cathedrall churches, colleigiatt churches, colleigis, hospytalls, monastries, priores, houses religiouse, personages, vicarigis, chauntries, ffre chappells, or other promocions spirituall, byn within the lymitts of every denry, or els where, within the lymytts of ther commissyon.

Item, after the said commissioners, by examinacion of the registers and other ministers, shall have knowlege of the nombre and names of all the denries within the lymytts of ther commissyon, and in whois dioces or jurisdiction they byn, and of the nombre and namys of all the dignities, monastries, priores, benefices, and promocions spirituall, within the lymytts of every denrye, or ellswere within the lymytts of ther commissyon; then the said commissioners shall devide them selfys by thre and thre in nombre, or by any other nombre above thre by ther discretions, allottyng to every nombre so devidid so many denries rurall, and other distinct placys within the lymytts of ther commissyon, as they by ther assentt shall think conuenient; and that every such nombre soe devidid shall with all diligence, without flavor, mede, drede, or corrupcyon, enquer, serche, and knowe of the hole and yerly values of all dignities, cathedrall churches, collegys, churches collegiatt, houses conuentuall, hospittalls, monastries, priores, relygyouse houses, prebends, personages, vicariges, chauntries, ffre chappells, and all other cures, offices, and promocions spirituall, what name or nature so euer they bee, within the lymitts of ther charge to them allotted, as well in placys exempte as nott exempte, and in whois dioces or jurisdiction they ben; and for true execucion of ther charge in this behalfe, shall examyne such incumbents, ther receyvours and auditours, by ther othes, and also se and veu such registers, boks of accompt, Ester boks, and all other writings as by ther discretions shall be thought conuenient and resonable for sur declaracion of the premissis; and ouer that use all suche other ways and menes, wherby the true and just yerly values of all the said dignities, cathedrall churches, collegiate churches, colleges, hospitalls, houses conuentuall, abbies, monastries, priores, houses religiouse, prebendys, personages, vicariges, benefices, cures, officis, chauntries, ffre chappells, and other promocions spirituall, may playnly and distinctly appere without any manner of concealment therof, using themselves after the order, manner, and fforme, as in thes articles next ensuyng ys mencyned and declared, makynge a playne boke therof after the auditours ffashion, accordyng as shall be expressyd in the last of the said articles under written.

Item, it is ordered, that if the see of any archebusshopp or busshopp be within the lymitts of ther commissyon, then the commissioners, or three of them, whereof the busshopp shall be one, shall first by suche means and ways as ys above mencioned serche and knowe the hole and entyre yerly value of the archebusshopriche, and busshopriche, where the commissyon
ys

ys directed, as well in spiritualtes as temporaltes, whatsoever it be, that is to saye, howe muche yn yerly value belongeth to the said archebusshopriche or busshopriche in castells, honours, mannors, londs, tenements, demenes, rents, fferms, possessions, and other temporall proffitts, whatsoever ytt be, and howe muche belongeth to the said archebusshopriche or busshopriche by reson of the spiritualtes and spirituall jurisdiction communibus annis: and in what sheeres, townes and placys, the castells, honours, mannors, londs, tenements, demeanes, fferms, rents, possessions, and other temporall proffitts belonging to the said archebusshopriche or busshopriche, lyen or ben; and ther distinct and severall yerly values; and the title, name, and nature of the yerly proffytts, that apperteyne to the said archebusshopriche and busshopriche by reson of hys spiritualtes, and spirituall jurisdiction; and ther seuerall yerly values communibus annis: and what yerely and perpetuall rents, pensions and ffees, be paide oute of the same, that is too say, such rents and pensions as be yerly paid to eny person or body politique, to theyr heyres and successours, and none other; and suche ffees as be yerly paid for receyvours, bailiffs, auditours, stuards, chauncellour, maister of the rolls, justice, shrife, or other officer of recorde, for temporal justice, and none other, and the name of the persons to whome such annuall and perpetuall rents, pensions and ffees, be yerly paide.

Item, to serche, enquerer and knowe the nombre, names, and certentie of all the mannors, londys, tenements, demeans, fferms, rents, possessions, personages, porcions, pencyons, tythes, oblations, and other proffitts whatsoever, as well spirituall as temporall, apperteyning or belongyng to the cathedrall church or monastrie, where the see of the archebusshop or busshop to whom the commission ys directed ys; and in what sheres, townes, hamletts and placis, the said mannors, londs, tenements, demeanes, rents, fferms, possessions, personages, porcions, pensions, tythes, oblations, or other proffytts lyen and ben; and the hole and entire distinct and severall yerly values of them, and the true certentie of the annuall and perpetuall rents, pensions, and almes; and also ffeez for receyvours, bailifys, auditours, and stuardys, and none other officers, yerely givyn and paide out of the same, and the namys of the said officers to whom suche ffees ben appoynted, and the names of the persons for whos soules such almes ys yerely destributed, and the names of the persons or placis wherunto, or to whome, suche annuall and perpetuall rents or pensions be yerely resolute or paid.

Item, to enquier, serche and knowe the names of the deane or prior of the said cathedrall church, or monastre, of the names of the subdene, supprior, tressurer, residenser, chaunter, sexten, almoner, hospiteler, bowser, and of every other person that hath any dignitie, prebend, vycarship, petycannonship, or other office, chauntrie, cure, or promocyon spirituall in succession, in the said cathedrall church or monastre; and the distinct nombre and names of every suche dignitie, prebend, vycarship, petycanonship, office, cure, chauntrie, and promocion spirituall, whiche hathe ben accustomed to be, and goo in succession in the said church or monastre; and the distinct yerely value and proffit that belongeth, and ys lymytted to the dignitie of the office of the said deane, prior, subdene, supprior, tressurer, residenser, chaunter, sexten, hospyteler, bowser, or to any other dignitie, prebend, vicarship, petycannonship, or other office, chauntrie, cure, or promocion spirituall that goith in succession in the said cathedrall church or monastrie.

Item, to serche and knowe the nombre and namys of euery archidiaconry and denrys rurall within the lymytts of ther commission, as well in placys exempt, as not exempt, and in whos dyoces or jurisdiction they lien; and the hole and entire yerly value of euery of them, as well in spiritualtes as in temporaltes, yf any be, and the nombre, namys and certentie of the temporaltes, yf any be, and where they lien, and ther distinct and severall yerly values, and the names, nombre, and nature of the spiritualtes, and ther seuerall yerly values communibus annis; and what annuell and perpetuall rents, pensions, and ffees for receyvours, bailyffys, auditours, and stewards only, and none other officers, ben yerly accustomed to be resolute and paid,
oute

oute of any of the said archidiaconries or denries rurall, and the namys of the persons to whome such rentts, pensions, and ffees, ben yerly paid.

Item, to serche and knowe the nombre and names of euery colleige founded and edefied, within euery denry rurall or ells-where within the lymytts of ther commission, as well in placys exempt, as not exempt, and in whois dioces and jurisdiction they byn; and the nombre, namys, and certentie of the manors, londs and tenements, demeanes, rentts, ffermes, possessions, personages, porcions, pensions, tithes, oblacions, and all other proffitts, as well spirituall as temporall, apperteyning to euery such colleige and churche collegiate; and in what sheres, townes, hameletts or placys, the said manors, londs, tenements, demeanes, rentts, ffermes, possessions, porcions, pensions, personages, tithes, oblacions, or other proffitts, lye and be; and the hole and entire, distinct, and seuerall yerly values of them; and the true certentie of the annuell and perpetuall rentts, pensions, almes and ffees for receyvours, bailifys, auditours, stewardys and none other offycers, yerly gyvyn and paid out of the same; and the names of such officers to whome such ffees ben appoynted; and the names of the persons for whois soules suche almes ys yerly gyvyn; and the namys of the persons or placys wherunto or to whome such annuall and perpetuall rentts or pensions ben yerely paid.

Item, to knowe and serche the names of the deanes, subdenes, maisters, provests, prebendaris, fellows, brethren, chauntrie-priestis, and euery other spirituall person, that hath any dignitie, prebend, petycanonship, vycarigeship, cure, office, or other promocyon spirituall, which goith by succession in any such colleige or churche collegyatt; and the names of suche dignyties, prebends, vicarshippys, peticanonshippys, chauntries, officis, cures, and promociions spirituall, and the distinct yerly value and proffytt that belongeth and is lymytted, as well to the deane, maister, provest, or chefe hed of suche colleige or churche collegyatt, as to euery other dignitie, prebend, vicarship, petycanonship, office, fellowship, chauntrie, cure, or promocyon spirituall, whiche hath succession, yn euery such colleige or churche collegiatt.

Item, to serche and knowe euery hospytall, house, and place conuentuall of any seculer priestys, or laye brethren, within euery denrye or ells where within the lymytts of ther commission, as well in placys exempt as not exempt, and in whois dioces and jurisdiction they ben; and the nombre, namys, and certentie of all the mannors, londys and tenements, demeanes, fermes, rentts, possessions, personages, porcions, pensions, tithes, oblacions, and all othere proffytts, as well spirituall as temporall, apperteyning or belonging to euery suche hospytall or place conuentuall; and in what sheres, townes, hameletts and placys, the said manors, londys, tenements, demeanes, rentts, possessions, personages, porcions, pensions, tythes, offerings, and other proffytts, lye and ben; and the hole and entire distinct and seuerall yerely values; and the true certentie of the annuell and perpetuall rentts, pensions, almes, and fees for receyvours, bailyfys, auditours, and stewardys, and none other officers, yerly gyvyn and paid oute of the same; and the names of the said offycers to whome suche fees ben assigned; and the names of the persons for whose sowles such almes ys yerly gyvyn; and the names of the persons or placys wherunto or to whome such rents or pensions ben yerly paid.

Item, to serche and knowe the name of the maister, provest, or other chefe gouernour of suche hospytall, or place conuentuall, and what yerly rent or proffytt to his dygnytie and office distinctly belongith, and ys lymytted; and of euery other person that hath eny other dignitie, fellowship, brothership, sustership, office, chauntrie, cure, aduauntage, or other promocion spirituall, that runnyth and goith by succession, within any suche hospytall, or place conuentuall; and the names and nombre of euery suche dignitie, fellowship, brothership, sustership, office, chauntrie, cure, aduauntage, or promocion spirituall, and what yerly proffytt or aduauntage belongyth, or is lymytted to euery such dignitie, felowship, brothership, sustership, office, cure, or other promocion spirituall, within euery suche hospytall, or place conuentuall.

Item, to serche and knowe the nombre and namys of euery abbey, monastrie, priory, and house relygiouse and conuentuall, as well charter house as other

other founded and edified, within euery denry or ellswhere, within the lymytts of ther commission, as well in placys exempt, as not exempt, and in whois dyoces and iurisdiction they ben; and the nombre, namys, and certentie of all the manors, londys, tenements, rentts, fermes, possessions, personages, porcions, pensions, tythes, oblations, and all other proffytts, as well spirituall as temporall, apperteyning or belonging to euery suche abbey, monastrie, priorie, or house religiouse; and in what sheres, townes, hameletts, and placis, the said manors, londis, tenements, demeanes, rentts, fermes, possessions, personages, porcions, pensions, tythes, oblations, and other proffitts lyen and ben, and ther hole and entire, distinct and seuerall yerly values; and the true certentie of such annuell or perpetuall rentts, pencias, almes, and fees for receyours, bailiffs, auditours, and stewardys only, and none other officers, yerly gyvyn and paid out of the same; and the seuerall names of the said officers too whome such fees be lymytted; and the names of the persons for whos soules such almes ys distributed and gyven; and the names of the persons and placis whereunto and to whome such annuell and perpetuall rents and pensions ben yerly paide.

Item, to serche and knowe the name of the abbott, abbess, prior, prioress, or other chiefe governor of such religiouse houses, and the names of the supprior, supprioress, sexten, selerer, almoner, bowser, hospyteler, munke, baylyfe, chanon bailife, and euery other spiritual persons, that have any distinct dignitie, office, cure, chauntrie, or promocion spirituall, that goith in certentie by succession, in any suche abbey, monastrie, priorie, or house religiouse; and the distinct names of suche officys, cures, chauntries, or promotions spirituall, and there yerely value and proffytt, that belongith as well to the abbott, prior, abbes, prioress, or other chiefe gouernor, as to the supprior, supprioress, selerer, selerers, sexten, hospyteler, almoner, bowser, munke, baylyfe, chanon baylyfe, or to any other, hauing office, cure, chauntrie, or promocion spirituall, that goith in certain succession, within any such abbey, monastrie, or priory, or house religiouse.

Item, to serche and knowe the nombre and names of euery personage, vicaryge, chauntrie, as well mortized as other, and free chapell within euery denry or ellswhere within the lymytts of ther commission, as well in placis exempt, as not exempt, and in whois dioces or iurisdiction they lyen; and the true and entire yerely value of all the londs, tenements, glebes, demeanes, rentts, possessions, tithes, offerings, porcions, pensions, and all other proffittys, as well spirituall as temporall, belongyng to euery suche personage, vicaryge, chauntrie, or fre chapell elswher soeuer suche londys, tenements, rents, possessions, tithes, offeryngs, porcions, pensions, or other suche proffytts as ys aforesaid lyen or ben, ether in the towne where suche personage, vicaryge, chauntrie, or free chapell, ys sett and foundyd, or elswhere, within any other towne or place; and in what shire, towne, or place, and there distinct, seuerall and yerely values; and the true certentie of the annuell and perpetuall rents, pensions, and synods, and proxis paide and yerely goyng out of suche personage, vicarige, chauntries, and free chapells; and to whome such rentts, pensions, synods, and proxis, ben yerely payde.

Item, finally, after the true and just yerly values of all the dignities, beneficis, officis, cures, and other promotions spirituall afore rehersed, examyned and known, then the said commissioners, to whome the commission shall be directed, shall cause to be made a fayer boke, after the auditours fashyon, putting first in the hed thereof the name of the archebusshoprick or busshoprick, where the commyssion ys directed, yff the see be within the lymytts of ther commission; and the hole and entire yerly value thereof, lyke as before is mencioned in the article concernyng the same, with the deduccions to be resolute, that are mencyned in the said article, and none other; and then next after that, to putt the name of the cathedrall church or monastrie, where the see of the archebusshopriche or busshopriche ys, and the nombre or namys of all suche dignities, prebendys, officys, cures, chauntries, and promocyons spirituall, whiche be in succession in the said cathedrall church or monastrie; and as well the hole and entire yerely value of the said cathedrall church, or monastrie, as the particuler yerely proffytt that belongyth

to euery of the said dignities, prebendys, offices, cures, chauntries, and distinct promotions spirituall in the same, with the deduccions to be resolute oute of the same, as ys mencyned in the article aboue specyfyed concernyng the same; and then next after that to put the nombre and names of euery archidiaconry and denry rurall within the lymytts of ther commission, and in whos dioces or iurisdiccio they be, and ther severall and particuler yerly values and deduccions, lyke as is mencyned in the article concernyng the same; and next after that to put euery college, churchie collegiatt, hospytall, abbey, monastrie, priorie, house religieuse, personage, vycarige, chauntie, fre chapel, and all other promotions spirituall, under the title and name of the denry rurall, where such collegis, churches collegiatt, hospitalls, abbeys, monastries, priores, personages, vicarigys, chauntreis, fre chappells, and promotions spirituall, lyen and ben foundyd; and theyr seuerall and distinct yerly values, with suche deduccions, as ys above mencyned in the articles afore written, concerning such dignities, monastries, priores, houses relygious, churches, benefices, chauntries, fre chapells, and promotions spirituall; and the nombre and names of all suche prebendys, dignities, offices, chauntries, cures, or other promotions spirituall, whatsoever they be, in any the said colliges, churches collegiatt, hospytalls, abbeys, monastries, priores, or houses relygious; and the distinct, seuerall, and yerly values, as afore declared yn the said articles; so that always under the title of euery denry rurall, ther be conteyned all such dignyties, abbeys, monastries, priores, houses relygious, benefices, churches, offices, cures, and promotions spirituall, where so euer they lyen or byn in the denry where they ben foundid and edefied: and yf any of them be oute of the lymytts of all denries, then so putt them by their selfys, rehersing ther namys, and the placys where they lyen, and in whoys dioces and iurisdiccio, with ther hole values and deduccions, as ys afore lymytted, added to euery of them distinct by them selfys. Foreseeing always, that in the makyng of all the yerely values of any manors, dignities, monastries, abbeys, priores, houses relygious, prebendys, benefices, chauntries, fre chapells, or other promotions spirituall, aboue rehersed, ther be made an hole and entire value of euery of them by them selfys, and nothing to be allowed ne deducted oute thereof for reparacions, fees, serving of cures, or any other causes or things what so ever they be, except only suche annuell and perpetuall rentts, pensions, almes, synods, prexis, and fees for officers, as before specyally ys mencyned in the articles afore written; and after that the said boke be made, then the said commissioners shall certyfy the same into the Kyng's Eschequor under their sells, accordyng as ys lymytted by the tenour of the commission, as they will aunswer unto the Kyng's Hyghnes at ther utmost parell, to the intent that the tenth of the premyssis may be taxed, and sett to be levied to the Kyng's use, according to the statute made and providyd of the graunte thereof.

Memorandum. That after the commissyoners, deuyded in nombre as ys aforesaid, haue seuerally executed the effects of ther charge conteigned in thes articles mencyned, that then all the hole nombre of the commissyoners, namyd in the commissyon, or the most part of them, shall assemble them selfys, and conferr all ther seuerall bokis together, and annexe euery off them to theyr commission, and thes instruccions; and so to certifie the same hooly and yntirely to gyther into the Kyng's Eschequor at the daye lymytted in ther comyssyon.

Returns (a) were consequently made by the commissioners into the exchequer under their hands and seals, which are thus headed:—

SEQUUNTUR annui valores omnium et singulorum honorum, castrorum, dominiorum, maneriorum, terrarum et tenementorum, ac aliarum possessionum quarumcumque temporalium, necnon decimarum, oblationum, portionum, pensionum, et aliorum proficuum, quorumcumque spiritualium in diversis comitatibus Angliæ separalibus existentibus, diversis collegiis, ec-

(a) In the custody of the remembrancer of the first fruits and tenths in the Court of Ex-

chequer. See *Report on Public Records*, App. (9, 18.)

LIST OF MONASTERIES.

clesiis collegiatis, domibus conventualibus, hospitalibus, monasteriis, prioratibus, domibus religiosis, archidiaconatibus, prebendis, rectoriis, vicariis, cantariis, liberis capellis, et omnibus aliis officiis ac promotionibus spiritualibus, quibuscunque pertinentibus sive spectantibus in comitatibus prædictis jacentibus, quorum nomina incumbendum et locorum religiosorum ac aliarum mansionum ecclesiarum, necnon valores earundem possessionum tam spiritualium quam temporalium, cum deductionibus et allocationibus earundem annuatim particulariter declarantur et annotantur, ut inferius coram domini regis commissionariis in hac parte assignatis juxta tenorem, vim, formam, et effectum cujusdem commissionis ejusdem domini regis gerentis datam apud Westmonasterium tricesimo die Januarii, anno regni dicti domini regis vicesimo sexto, et certarum instructionum manu dicti domini regis signato eidem commissioni annexa, ac præfatis commissionariis directa, ut in dicta commissione et instructionibus presentibus annexis plenius continetur.

From these returns (a) the following list of monasteries of the yearly value of £200 and upwards dissolved by stat. 31 H. 8. c. 13. is taken. (b)

BEDFORDSHIRE.

Chicksand	P.	£222	3	5	. temp. W. 2.
Dunstable	P.	344	13	3	. King Hen. 1.
Elstow, Helenestowe, } or Alnestowe,	A.	284	12	11	. temp. Will. 1.
Newenham	P.	293	5	11	. temp. Hen. 1.
Warden	M.	389	16	6	. K. Hen. 1. 1138:
Woburn	M.	391	18	2	{ 1145. (Tanner) temp. K. John. (Degge.)

(a) In the custody of the remembrancer of the first-fruits and tenths in the court of exchequer.

(b) The circumstance of a monastery being under the value of £200 is not conclusive as to a possible exemption by virtue of 31 H. 8. for by the 27 H. 8. c. 28. § 6. a proviso was made " That the King's Highness, at any time after the making of this act, may at his pleasure ordain and declare, by his letters patent under his great seal, that such of the said religious houses which his Highness shall not be disposed to have suppressed nor dissolved by authority of this act, shall still continue, remain and be in the same body corporate, and in the said essential estate, quality and condition, as well in possessions as otherwise, as they were afore the making of this act, without any suppression or dissolution thereof, or of any part of the same, by the authority of this act, and that every such ordinance and declaration, so to be made by the King's Highness, shall be good and effectual to the chief governors of such religious houses which his Majesty will not have suppressed, and to their successors, according to the tenors and purports of the letters patent thereof to be made; any thing or things contained in this act to the contrary hereof notwithstanding." And by § 7. of the same act it was also provided " That this act, or any thing or things therein contained, shall not extend, nor be prejudicial to any abbots or priors of any monasteries or priories being certified into the King's Exchequer to have in possessions and

profits spiritual and temporal above the clear yearly value of two hundred pounds, for or concerning such cells of religious houses, appertaining or belonging to their monasteries or priories, in which cells the priors or other chief governors thereof be under the obedience of the abbots or priors to whom such cells belong, as the monks or canons of the covents of their monasteries or priories, and cannot sue nor be sued, by the laws of this realm, in or by their own proper names, for the possessions or other things appertaining to such cells whereof they be priors or governors, but must sue and be sued in and by the names of the abbots or priors to whom they be obedient, and to whom such cells belong; and also be priors or governors dative, and removable from time to time, and accountants of the profits of such cells, at the only pleasure and will of the abbots or priors to whom such cells belong; but that every such cell shall be and remain undissolved in the same estate, quality and condition, as if this act had never been made; any thing in this act to the contrary hereof notwithstanding." So that in all cases where non-payment of tithes for lands, formerly belonging to a spiritual body, has in fact existed, a particular search should be made, in order to ascertain whether they were within these provisions. The same observation is applicable to the preceptories belonging to the order of Hospitallers of St. John of Jerusalem, dissolved by 32 Hen. 8. c. 24.

A proviso for the cells of other monasteries being under obedience.

BERKSHIRE.

BERKSHIRE.

Abingdon	M.	£1876	10	9	720.
Bustleham, or Bultesham, } or Bisham	M.	285	11	1	13 Edw. 3.
Reading	M.	1938	14	3	K. Hen. 1.

BRISTOL, see GLOUCESTER.

BUCKINGHAMSHIRE.

Asheridge, or Ashing . . .	Dom. Coll.	£416	16	4	temp. Ed. 1.
Missenden	M.	261	14	6	{ 1133. (<i>Tanner.</i>)
Noteleye or Nutley, or Nuley	M.	437	6	8	{ 1293. (<i>Degge.</i>)
					1112.

CAMBRIDGESHIRE.

Barnwell	P.	£256	11	10	temp. Hen. 1.
Ely	M.	1084	6	9	607.
Thorney	M.	411	12	0	969.

CHESHIRE.

Chester, St. Werburgh's . .	M.	£1003	5	11	1093.
Combermere		225	9	7	Cist. 1134.
Valle regali de, or Vale Royal	M.	518	19	8	Cist. K. Ed. 1.

CORNWALL.

Bodmyn	M.	£270	11	0	K. Adelstan, 936.
German's St.	M.	243	8	0	King Ethelstan.
Launceston	M.	354	0	11	A West Sax. K.

CUMBERLAND.

Carlisle	P.	£418	3	4	T. Will. 2.
Holm Cultram	M.	427	19	3	1135.

DERBYSHIRE.

Darley, or Derlegh . . .	M.	£258	14	5	T. Hen. 1.
--------------------------	----	------	----	---	------------

DEVONSHIRE.

Buckfast	P.	£466	11	2	Cistert. 1137.
Buckland	M.	241	17	9	Cistert. 4 Ed. 1
Dunkeswell	M.	294	18	6	Cistert. 1201.
Ford	M.	373	10	6	Cistert. 1140.
Hartland	M.	306	3	2	1 Hen. 2.
Newenham	M.	227	1	8	Cistert. 1246.
Plimton	M.	912	12	8	A West Sax. K.
Tavistock	M.	902	5	7	961.
Torre	M.	396	11	0	Præmonst. 1196.

DORSETSHIRE.

Abbottesbury	M.	£360	9	2	1026.
Cern, or Cernell	M.	515	17	10	970.
Middleton	M.	578	13	11	896.
Shaftesbury	N.	1166	8	9	888.
Sherburne	M.	682	14	7	Before Will. 1.
Tarent	Cell	214	7	9	Cister. T. Hen. 3.

LIST OF MONASTERIES.

DURHAM. (a)

Durham M. . . . £1615 14 10 . 1017.

ESSEX.

Barking M. . . . £862 12 5 . 680.
 Chichor St. Osyth M. . . . 677 1 2 . 1120.
 Coggeshall M. . . . 251 2 0 . 1141.
 Colchester M. . . . 523 17 0 . 1096.
 Stratford Langthorn . . . M. . . . 511 16 5 . Cistert. 1134.
 Walden M. . . . 372 18 2 . 1136.
 Waltham M. . . . 900 4 3 . 1038.

GLOUCESTER. (b)

Bristol M. . . . £ 670 14 11 . Hen. 2.
 Cirencester M. . . . 1051 7 1 . A Saxon King.
 Gloucester M. . . . 1946 5 9 . 700.
 Hayles, or Tray M. . . . 357 7 8 . Cistert. 1246.
 Tewkesbury M. . . . 1598 1 3 . 717.
 Winchelcombe M. . . . 759 11 9 . 789.

HAMPSHIRE.

Bealien, de bello loco, or Bewley M. . . . £ 326 13 2 . Cistert. 1204.
 Hide, or Newminster . . M. . . . 865 18 1 . 901.
 Romsey M. . . . 393 10 10 . 968.
 Southwicke, or Portchester P. . . . 257 4 4 . Hen. 1.
 Twineham, or Christ Church P. . . . 312 7 0 . 1150.
 Tychfield M. . . . 249 16 1 . Præmons. 1231.
 Wherwell M. . . . 339 8 7 . 986.
 Winchester 1507 17 2 . 646.

HEREFORDSHIRE.

Leominster, or Lemster . { Cell to
 Reading. } £ 1125.
 Wigmore P. 267 2 10 . 1179.

HERTFORDSHIRE.

St. Alban's (c) M. . . . £2102 7 1 . 795.

HUNTINGDONSHIRE.

Ramsey M. . . . £1715 12 3 . 969.
 St. Neot's M. . . . 241 11 4 . 1113.

KENT.

Bexley M. . . . £ 204 4 11 . Cistert. 1146.
 Canterbury Ch. Ch. . . . P. . . . 2349 8 5 . 600.
 Canterbury St. Augustine's M. . . . 1413 4 11 . 602.
 Dartford M. . . . 380 9 1 . 1355.
 Feversham M. . . . 286 12 6 . 1147.
 Leedes P. . . . 362 7 7 . 1119.
 Malling M. . . . 218 4 2 . T. Will. 2.
 Rochester P. . . . 486 11 5 . 604.

(a) Tinmouth, see Northumberland.

(b) Kingswood, see Wiltshire.

(c) This monastery had numerous cells belonging to it.

LANCASHIRE.

LANCASHIRE.

Furnes	A.	£ 805 16 5	. Cistert. 1124.
Whalley	P.	321 9 1	. Cistert. 1172.

LEICESTERSHIRE. (a)

Croxton	M.	£ 385 0 10	. Præmons. 1162.
Laund	M.	399 3 3	. T. Hen. 1.
Leicester, St. Mary	M.	951 14 1	. 1143.

LINCOLNSHIRE.

Axholm	P.	£ 237 15 2	. T. Ric. 2.
Bardney	M.	366 6 1	{ A King of Mercia.
Barlings, or Oxney	M.	252 5 11	
Crowland	M.	1883 15 10	. Præmons. 1154.
Kirkstead	M.	286 2 7	. 716.
Lincoln, St. Catherine	P.	202 5 1	. Cistert. 1139.
Revesby	M.	287 2 4	. 1148.
Sempringham	M.	317 4 0	. Cistert. 1142.
Spalding	M.	767 8 0	. 1139.
Thornton	M.	594 17 10	. 1052.

LONDON AND MIDDLESEX.

Chartreuse	P.	£ 642 0 4	. 1360.
Clerkenwell	P.	262 19 0	. 1100.
Haliwell	P.	300 19 5	. 1127.
Minories (b)	P.	318 8 0	. 1293.
St. Bartholomew's	P.	653 16 6	. 1123.
St. Helen's	P.	314 2 6	. 1210.
St. John of Jerusalem	P.	2385 19 11	. 1100.
St. Mary of Graces	M.	546 0 10	. Cistert. 1349.
Syon	M.	1731 8 4	. 1414.
Westminster	A.	3470 0 2	. 610.

NORFOLK.

Castleacre, or Eastacre	M.	£ 306 11 4	. 1085.
Norwich	P.	874 14 6	. 1100.
St. Bennet's of Hulme	M.	583 17 9	. 1026.
Thetford	P.	312 4 4	. 1104.
Walsingham	P.	391 11 7	. T. Will. 1.
Westacre	M.	260 13 7	. T. Will. 2.
West Dereham	M.	228 0 0	. Præmons. 1188.
Wymondham	M.	211 16 6	. 1107.

NORTHAMPTONSHIRE.

Northampton, St. Andrew's	P.	£ 263 7 1	. 1076.
Peterborough	M.	1721 14 0	. 655.
Pipewell	M.	286 11 8	. Cistert. 1143.
Sulby	M.	258 8 5	. Præmons. 1155

NORTHUMBERLAND.

Tinmouth (c)	N.	£ 377 10 5	. Before Will. 1.
------------------------	------------	------------	-------------------

(a) The abbey of Cockersand is put down in Speed at the annual value of 228*l.* 5*s.* 4*d.* In Liber Regis, 157*l.* 14*s.* 0½*d.* It was founded 1092, and the monks were of the order of Præmonstratenses.

(b) Domus sive Priorissa Minorissarum Ordinis St. Clare.

(c) A cell to St. Alban's, according to Speed.

NOTTINGHAMSHIRE.						
Lenton	P.	£ 329	15	10	.	t. Hen. 1.
Thurgarton	P.	359	9	4	.	1130.
Welbeck	M.	249	6	3	.	Præmons.1152.
Workesop	P.	239	15	5	.	t. Hen. 1.

OXFORDSHIRE.						
Dorchester	M.	£ 217	5	9	.	635.
Eynesham	M.	441	12	2	.	1005.
Godstowe	M.	274	5	10	.	1138.
Osneye	M.	654	10	2	.	1129.
Thame	M.	256	14	7	.	t. Hen. 1.

SHROPSHIRE.						
Hales Owen	M.	£ 280	12	2	.	t. K. John.
Houghmond	M.	259	13	7	.	1110.
Lyleshall	M.	229	3	1	.	1145.
Shrewsbury	M.	532	4	10	.	1081.
Wenlock	P.	401	0	7	.	1081.

SOMERSETSHIRE.						
Athelney	M.	£ 209	0	3	.	888.
Bath	M.	617	2	8	.	775.
Bruton	M.	439	6	8	.	1005.
Glastonbury	M.	3311	7	4	.	708.
Henton	P.	248	19	2	.	t. Hen. 3.
Keynsham	M.	419	10	4	.	1170.
Michelney	M.	447	4	11	.	740.
Minchin Buckland	P.	223	7	4	.	t. Hen. 2.
Montacute	M.(a)	456	14	0	.	t. Hen. 1.
Taunton	P.	286	8	10	.	t. Hen. 1.
Witham	P.	215	15	0	.	t. Hen. 2.

STAFFORDSHIRE. (b)						
Burton	M.	£ 267	14	9	.	1004.
Dieulacres, or De la Croix		227	5	0	.	Cistert. 1220.

SUFFOLK. (c)						
Bury St. Edmund's	A.	£1659	13	11	.	1020.
Butley	M.	318	17	2	.	1471.
Sibton(d)	M.	250	15	7	.	Cistert. 1149.

SURREY.						
Aldebury, or de novo Loco	M.	£ 258	11	11	.	t. Ric. 1.
Bermondsey	M.	474	14	4	.	1081.
Chertsey	M.	659	15	9	.	666.
Merton	M.	957	19	5	.	1117.
Shene	P.	777	12	0	.	Hen. 5.
St. Mary Overy(e)	M.	624	6	6	.	1106.

(a) Mountagu. *Un priore conventuel de-south l'Abbe de Clune q'est del seignorie et pouvoir de France.* Made denizen t. Hen. 4. See Rot. Parl. 4 Vol. 27. 2 Hen. 5.

(b) Croxden, of the annual value of 90l. 5s. 11d. was continued by the King and afterwards dissolved by 31 Hen. 8.

(c) See 31 Hen. 8. c. 13. § 24.

(d) Ixworth is added in some lists with a valuation of 280l. 9s. 5d.: it was a cell to Bury.

(e) Southwark.

SUSSEX.

Battell, or de Bello	M. . . .	£ 880 14 7	. 1066
Lewes	M.	920 4 6	. 1078.
Robert's bridge	M.	248 10 6	. t. Hen. 2.

WARWICKSHIRE.

Combe	M.	£ 311 15 1	. Cistert. 1150.
Coventry	P.	251 5 9	. 1043.
Kenilworth	M.	538 19 0	. 1122.
Merivale	M.	254 1 8	. Cistert. 1100.
Nuneaton	P.	253 14 2	. t. Hen. 2.

WILTSHIRE.

Ambresbury	M.	£ 395 15 2	. 979.
Bradstocke	P.	212 19 3	. 1142.
Edington	P.	442 9 7	. 1350.
Kingswood	M.	648 19 11	. Cistert. 1139.
Malmesbury	M.	803 9 7	. 648.
Wilton	M.	601 1 2	. 773.

WORCESTERSHIRE.

Bordeslye	M.	£ 388 9 10	. Cistert. 1138.
Evesham	M.	1183 12 3	. 700.
Malvern Major	M.	380 1 5	. 1083.
Pershore	M.	643 4 5	. 984.
Worcester	P.	1229 12 8	. 679.

YORKSHIRE.

Bolton in Craven	P.	£ 212 3 4	. 1120.
Burlington, or Bridlington	M.	547 6 11	. t. Hen. 1.
Byland	M.	238 9 11	. Cistert. 1143.
Fountain	M.	998 6 8	. Cist. 1132.
Gisborn	M.	628 3 4	. 1119.
Jawall, or Joreval	M.	234 18 5	. Cist. 1156.
Kirkham	M.	269 5 9	. 1121.
Kirkestall	M.	329 2 11	. Cist. 1147.
Melse, or Meaux	M.	299 6 4	. Cist. 1150.
Monkbreton, or Montbre- ton, or Lund }	M.	239 3 6	. t. Hen. 2.
Mountgrace	M.	323 2 10	. 1396.
Newburgh	P.	367 13 3	. 1127.
Nostell, or Noteslye	M.	492 18 0	. t. Will. 2.
Pontefract	M.	337 14 8	. t. Will. 2.
Rivaulx, or Rievall	M.	278 10 2	. Cist. 1131.
Roch, or De Rupe	M.	224 2 4	. Cistert. 1147.
Selby	M.	729 12 10	. 1078.
Watton	M.	360 18 10	. 1150.
Whitby	M.	437 2 9	. 664.
York, St. Mary	M.	1550 7 1	. Will. 2.

DIGESTED INDEX

TO THE

REPORTS AND STATUTES

RELATING TO

TITHES.

ACCOUNT—AFTER-PASTURE.

ACCOUNT.

1. ACCOUNT does not lie against one who, claiming no interest, takes away tithes set out by a parishioner, for there is no privity.—14 & 15 El. *Tottenham v. Bedingfield.* i. 59

ACORNS.

1. Tithes shall be paid of acorns, because they renew yearly.—42 El. C. B. *Sampson v. Worthington.* i. 152

12 Jac. B. R. *Stampe v. Clinton.* i. 234

2. Tithes are due of acorns severed.—2 Jac. B. R. *Reynolds's case.* i. 160

3. Though tithes be due of acorns gathered and sold, yet where they dropt from the trees, and the hogs ate them, prohibition was granted. 3 Car. B. R. *Anon.* i. 358

ADVOWSON.

1. A grant from the crown of an advowson (excepted in a former grant under general words) will be presumed after a possession evidenced by title deeds for 133 years and three presentations.—59 G. 3. Canc. *Gibson v. Clark.* iii. 946

2. Whether the *nullum tempus* act, 9 Geo. 3, c. 16, applies to advowsons? *Qu.* S. C. *ibid.*

AFTERCROP—AFTERMATH— AFTERPASTURE.

See AGISTMENT—DISCHARGE—HAY.

1. In regard the owner of the ground pays tithe of hay, he is thereby discharged of common right from tithe of agistment of the same land in the same year.—4 Jac. B. R. *Grene v. Austen.* i. 164

2. By the law of the realm, that is, the com-

mon law, no tithes shall be paid of the after-pasture of a meadow, &c.—6 Jac. C. B. The case of *Modus Decimandi.* i. 177

3. A custom was alleged in a town that every inhabitant who maintained a family and dairy for manuring his land and maintenance of his family, had used to pay tithes of corn and hay growing upon his farm in kind, and by reason thereof had been used to be discharged of tithes of the aftercrop of the same land.—9 Jac. C. B. *Baxter v. Hope.* i. 200

4. A custom to make up the first crop is a good discharge of the after-crop.—13 Jac. B. R. *Mascall v. Price.* i. 225

5. For the aftermath of grass no tithes are due by the law of the land.—9 Car. B. R. *Andrews v. Lane.* i. 377

6. A custom to be discharged of aftermath, in consideration of making the first tunsure into hay and setting it out in cocks, held good.—11 Car. B. R. *Anon.* i. 383

7. Of common right, tithes of aftermath, or the aftercrop of grass mowed (there being no prescription or custom against, or in discharge of the same) ought to be paid.—33 Car. 2. Scacc. *Margetts v. Butcher.* i. 530

8. Tithes are due for the aftermath of clover grass, but not for the afterfeeding and depasturing.—35 Car. 2. Scacc. *Hall v. Babb.* i. 541

9. A custom to be discharged of tithes of the second math where the owner makes the first math into grass cocks, is not good.—6 W. 3. Scacc. *Colley v. Smith.* i. 587

10. TREBY, Ch. J. said that tithes are not payable of aftermath *de jure*, and therefore it is but form to lay a custom to be discharged of tithes of aftermath in consideration of making the former math into hay, for tithes are payable only of things *semel in anno renovantibus* 9 W. 3. C. B. *Norton v. Brigs.* i. 624

11. A custom to make the first mowth of

grass into equal cocks at the expense of the parishioner, and to set out the tenth cock in full satisfaction of the tithes as well of the latter mowth as of that mowth is good, and there is no difference between clover grass and ordinary grass.—13 W. 3. C. B. *Durrant v Booty*. i. 639

12. A custom to cut the grass and ted and spread it, and afterwards to gather it into winrows, and then into grass cocks, and to set out the tenth cock, and by reason thereof to be discharged of the tithes of the hay of the second math of the same ground, is good; and so of clover set out in great cocks.—4 Ann. Scacc. *Waterman v. Jones*. i. 671

13. No tithes are due for afterpasture where tithe has been paid of the first crop.—11 Ann. Scacc. *Underwood v. Gibbon*. i. 701

14. Cattle fed upon meadow ground after it is mowed, shall not pay tithes, unless by custom.—12 Ann. Scacc. *Smith v. Johnson*. i. 705

15. No tithe is due for the herbage of unprofitable cattle fed upon land mowed, of which tithe has been paid.—2 Geo. Scacc. *Ayde v. Flower*. i. 722

16. No tithes are due for afterpasture or stubble feed.—7 Geo. Scacc. *Franklyn and others, v. Master and Brethren of St. Cross*. i. 768

17. Upon an issue there was found to be no custom to exempt aftermath from tithe upon consideration of paying tithe of the first math put into cocks.—11 Geo. Scacc. *Reynall v. Wills*. i. 808

18. An issue was directed to try a custom, that in consideration of the occupiers making the tithes of the first crop of clover into hay in great cocks, no tithes should be payable for the second crop:—*semb.* that such a custom is good. 10 G. 3. Scacc. *Wood v. Harrison*. ii. 237

19. When grass has been cut for hay, no tithe is due for the afterpasture.—30 G. 3. Scacc. *Ellis v. Saul*. ii. 360

AGISTMENT.—See DISCHARGE.

1. The commons pray, that whereas divers men of holy church implead many liege subjects of the realm in court-christian for tithes of agistment of certain lands, meadows, pastures, and wastes, which have not been tithed of agistment before these days; that is to say, of lands sown, and meadows, the same year after they have taken their tithes of corn and hay, and of pastures and wastes, which have at no time been tithed for agistment, where the said persons of holy church take their tithes continually of lambs, calves, and other such manner of tithes, coming and being upon the said lands, meadows, pastures, and wastes, to the great damage and disseisin, as well of lords, as of others poor tenants of the commons of the realm.

May it please our Lord the King, in this present parliament, to make declaration, whether the said tithes of agistment shall be paid or not, and to order a prohibition, or other due remedy against the parsons of holy church, who shall serve such pleas in court-christian, against any of the liege subjects of the King, against right, law, and reason.

Answer.—Let him who feels aggrieved sue specially.—2 Hen. 4. iv. 16

2. *Walmesley* held that no tithes were properly due for agistment, for the grass is part of the freehold, but if a parishioner would convert tillage into pasture to agist it, then the parson might suggest covin to defraud him of his tithes; but all the other judges held that the opinion in F. N. B. was not law, and that tithe should be paid for agistment *dummodo non agatur* for agistment of milch kine, draught oxen, or other beast for provision of the house.—38 El. B. R. *Grysmen v. Lewes*. i. 112

3. For beasts agisted for hire, or for dry cattle, which are depastured to be sold, agistment tithe shall be paid; but for dry cattle reared for the plough, or to be expended in the house, none shall be paid; and so is F. N. B. 53 to be understood.—38 El. B. R. *Sherington v. Fleetwood*. i. 132

4. No agistment tithe is due for young cattle reared for plough or pail, if there be a custom not to pay.—41 El. B. R. *Green v. Hun*. i. 147

5. If a man, according to the custom of the country, sows lands to feed his horses for tillage, and has used to suffer his horses to be fed upon the land without any sowing thereof, the parson shall not have any tithes thereof, for this is no more than pasture for the horses.—3 Jac. *Same's case*. 1 Ro. Abr. 646.

6. Tithes are payable for agistment, viz. the feeding of dry cattle, which do not serve for the plough or pail, nor are spent in the family. In the King's forests cattle are taken by the King's officers to agist them, and they are accountable for this agistment, that is, a sum for feeding cattle there. And it is called agistment because the cattle are suffered *agiser*, that is, to be *levant et couchant* there.—3 Jac. Cam. Scacc. *Anon*. i. 164

7. In regard the owner of the ground pays tithe of hay, he is thereby discharged of common right from tithe of agistment of the same land in the same year.—4 Jac. B. R. *Grene v. Austen*. i. 164

8. If the parson have tithe of corn one year, and the land is left unsown the next year, to the intent that it may be ploughed and made ready to be sown the third year, no tithes shall be paid for this second year, for by the lying thereof fresh, the land is bettered, and the parson will have the better tithes the third year.—7 Jac. *Smith's case*. 1 Ro. Abr. 842.

9. No tithe is due for agistment of saddle horses kept for pleasure, but for working horses for the cart or plough, or cattle bought and fatted to sell, it shall be paid.—9 Jac. B. R. *Pothill v. May*. i. 199

10. No tithe is due for agistment of barren cattle, bred and kept to be employed in husbandry, unless fatted and sold away.

11. No tithe shall be paid for the herbage of milch cows or sheep, for they are *animalia fructuosa*.—13 Jac. B. R. *Mascall v. Price*. i. 225

12. If a man lease pasture land, rendering a rent, the lessee shall not be charged for the tithes of the rent, but he ought to have tithes in kind of the land; and if they be but barren cattle, yet he ought to sue for tithes in kind of them, if any be due, though it was said that by the spiritual law he had the election, for this crosses the common law.—14 Jac. C. P. *Ellis v. Drake*. 1 Ro. Abr. 843.

13. Prohibition will lie for the tithe of agistment of a saddle horse, with an averment that it was used for labour, otherwise not.—15 Jac. B. R. *Hampton v. Wild*. i. 262

14. Agistment shall be paid for pasture fed by an innkeeper with guest horses, unless it had been mowed before, and tithe paid of the hay.—16 Jac. B. R. *Richardson v. Cabell*. i. 296

15. Though no agistment tithe be due for a man's own husbandry cattle, yet a prescription to be discharged thereof, for such cattle belonging to others, is bad.—18 Jac. B. R. *Johnson v. Parker*. i. 321

16. Prohibition in a suit for tithe of beasts employed in carrying goods and in husbandry.—22 Jac. B. R. *Anon*. i. 332

17. Where sheep are removed to another parish before shearing time, the parson shall have agistment tithe for the time they are depastured in his parish. Of unprofitable cattle the parson shall have the tenth of the bargain for depasturing, as horses, oxen, &c. But if profitable cattle, he shall have tithe in specie, as cows, sheep, &c.—2 Car. B. R. *Anon*. i. 356

18. Hutton and Yelverton, who were in court, held, that no tithes should be paid for young cattle brought up for the cart or plough without a custom; but if sold before they come to perfection, then tithes should be paid.—4 Car. C. B. *Woolmerston's case*. i. 362

19. *Quare*, whether cattle preserved for the plough or pail, be discharged from tithes by the common law, without a custom in the place, and a consideration alleged.—4 Car. C. B. *Thornhill's case*. i. 362

20. Agistment tithes shall be paid for old milch cows that had become dry. And Harvey said, if milch cows be reserved for calves, but they are dry, [unexpectedly] no tithe shall be paid; but if they be sold, by which it appears

that they were kept for fattening, tithes shall be paid.—4 Car. C. B. *Anon*. i. 366

21. Agistment tithe shall not be paid for any cattle eaten in the family, any more than for cattle reared for pail or plough. The court held, that the owner of the land, and not the proprietor of cattle agisted, ought in reason to pay the agistment tithe; but as it belonged to the spiritual court to determine, a consultation was granted.—7 Car. B. R. *Facy v. Long*. i. 376

22. Tithe is payable by the innkeeper for the herbage eaten by travellers' horses. But the court doubted at what rate it should be paid, it being ascertained by custom. They said, however, they would award a commission to inquire the value unless the parties should agree. Agistment tithe shall be paid by the occupier of the land.—1655. Scacc. *Guilbert v. Eversly*. i. 414

23. Agistment tithe at the rate of 2s. for every pound rent of land, decreed in the Exchequer.—12 Car. 2. Scacc. *Holbeck v. Taylor*. i. 429

24. Agistment tithes are due of common right, for barren and unprofitable cattle, which yield no tithes, unless they are reared and employed for the plough, the pail, the saddle, or spent in the family in the same parish.—12 Car. 2. Scacc. *Burgis v. Diamond*. i. 432

25. Tithes for herbage and pasturage of cattle decreed at a pound rate according to the rent of the lands.—13 Car. 2. Scacc. *Decereaux v. Radley*. iii. 1230

26. Tithes for barren cattle are due of common right, according to the value of the land, after the rate of 2s. in the pound; but by custom or prescription agistment tithes may be paid in other ways, as by the acre, and for all manner of cattle, whether barren, or for the plough, or pail; but for these, of common right, no tithes are due, if used in the same parish: and when tithes are payable by custom, they shall be paid, though the lands are not rented, or lie fresh.—13 Car. 2. Scacc. *Holbeech v. Whadcocke*. i. 433

27. Agistment tithes of lands formerly parcel of the possessions of the Cisterians, are payable by the owner of the cattle; for the land is not in *propriis manibus*. The Ch. B. said the owner of the soil might pay them, but clearly the agistor must.—13 Car. 2. Scacc. *Pory v. Wright* and others. i. 434

28. Where sheep were agisted in a parish for twenty days, during which time no lambs fell, nor [wool] tithes became due; a prohibition to a libel for a proportion of tithes for that time was denied.—19 Car. 2. B. R. *Weems v. Amerson*. i. 457

29. Prohibition to a suit for tithe of herbage of cattle used in husbandry.—22 Car. 2. B. R. *Hust v. Clerke*. i. 487

30. No tithes are payable for pasture of plough horses; nor, according to HALE, of saddle horses.—25 Car. 2. B. R. *Anon.* i. 498

31. Sheep fed in stubble fields solely for the purpose of manuring the land are not titheable.—28 Car. 2. C. B. *Anon.* i. 509

32. For unprofitable cattle the owner of the ground shall pay agistment-tithe, according to the rate he has for depasturing. But if he agist profitable cattle, as sheep, then the owner of them shall be answerable, because wool and lamb in kind are due, which it is impossible the owner should pay.—31 Car. 2. Scacc. *Anon.* i. 523

33. In the parish of St. John's, in the Isle of Thanet, tithes for the herbage of arable lands are by custom due to the vicar for the same year in which the said lands have been sowed with corn.—1 Jac. 2. Scacc. *Turnor v. Payne.* i. 549

34. Tithe of turnips sown upon fallow land, fed off with the sheep of a stranger, or with the owner's own sheep fatted for sale, shall be paid as for herbage and agistment.—5 W. & M. Cam. Scacc. *Daniel v. Tuffnal.* i. 578

35. Tithe for agistment of barren cattle is due of common right, because the grass which is eaten is *de jure* titheable, and must have paid tithe if cut at perfection. Two shillings in the pound is the usual tithe of common right, (though there are divers customary manners of tithing for them) therefore a hundred cannot prescribe in *non decimando* for them.—6 W. 3. B. R. *Hicks v. Woodeson.* i. 592

36. No agistment tithe is due for cattle trespassing, or straying from defect in fences; or for cattle going by reason of vicinage.—7 W. 3. Cam. Scacc. *Wilbraham v. Saunders.* i. 607

37. If cattle be depastured in a parish where they do not plough, they shall pay tithes there, although they plough in another parish.—7 W. 3. B. R. *Swales v. Lowther.* i. 614

38. Agistment tithe is to be paid for oxen and unprofitable cattle, for the time they are grazed and fatted for sale, after they are turned off from the plough.—8 W. 3. Scacc. & Dom. Proc. *Sandys v. Eastmond.* i. 616

39. Barren cattle used for the plough will only be exempt when used on arable land within the parish in which the exemption is claimed.—8 W. 3. C. B. *Scoles v. Lowther.* i. 621

40. POWELL said, that *uberiores decimæ* do not only mean better tithes, but so much more as will fully recompense the loss of the tithes of that by means of which *uberiores decimæ* are produced. But of this TREBY, Ch. J. doubted much.—S. C. *ib.*

41. By the common law pasturage is as much titheable as hay.—13 W. 3. B. R. *Selby v. Bank.* i. 639

42. By HOLT, Ch. J. If you have a house

in one parish, and live there, you must not pay agistment for dry cattle there. But if you be not a housekeeper there, you must pay tithes for agistment. And if there be cattle of the plough agisted in another parish, they must pay tithes there where they agist, because they are not cattle of plough there.—1 Ann. B. R. *Harrow's case.* i. 647

43. A large common extends itself into several parishes, and by custom the owners of cattle, fed upon the common, pay tithes of such feeding to the parson of the parish where they respectively live, and not to the parson of that parish in which the cattle occasionally feed; held to be a good custom.—8 Ann. Dom. Proc. *Mickleburgh v. Crisp.* i. 693

44. Tithe of agistment is payable by the occupier of the ground, and not the agistor. Saddle-horses shall pay no tithe, or cattle for the plough or pail, or killed for the use of a man's own family.—11 Ann. Scacc. *Underwood v. Gibbon.* i. 701

45. Agistment tithe for unprofitable cattle shall be paid in proportion to the number of the cattle and the value of the land, generally at the rate of two shillings in the pound. So of travelling cattle. Cattle fed upon meadow ground after it is mowed, shall not pay tithes, unless by custom.—12 Ann. Scacc. *Smith v. Johnson.* i. 705

46. The plaintiff, as lessee of the tithes of St. Gregory's and St. Peter's, in Sudbury, in the county of Suffolk, claims the tithes of agistment of saddle horses in the common called King's Marsh and Portman's Croft.—3 Geo. Scacc. *Underwood v. Gibbon.* i. 727

47. A custom that the inhabitants of a parish keeping sheep upon a common fen in winter, selling them after Candlemas day and before shearing day following, should pay 3*d.* for every sheep so sold, in lieu of the tithes of such sheep. 4 Geo. Scacc. *Shaw v. Brumpton.* i. 737

48. A butcher who carries on his trade in one parish, but lodges and boards with his father in another, and occasionally turns his beasts into his father's lands, and pays him for the feeding thereof, is not liable to pay tithes for the same; but is liable to pay Easter offerings.

49. Tithes for depasturing unprofitable cattle are payable by the occupier of the ground, and not by the agistor.

50. The bill, in case of a common, must be against the owner of the cattle (if known).

51. PAGE, J. said, that the same duty could not arise in two different persons at the same time.—7 Geo. Scacc. *Fisher v. Leman.* i. 762

52. A custom that the landholders in a parish are exempt from agistment tithe, on payment of their other tithes, is bad.—7 Geo. Scacc. *Jones v. Davies.* i. 766

53. No tithes are due for afterpasture or stubble feed.—7 Geo. Scacc. *Franklyn and*

others, *v. Master and Brethren of St. Cross.* i. 768

54. Agistment tithe decreed at the rate of 1s. 6d. in the pound of the rent.—11 Geo. Scacc. *Johnson v. Firebrace.* iii. 1234

55. Modus, that in consideration of the parishioners making the tithe grass into hay, the parishioners should pay no tithes for herbage of dry and unprofitable cattle, held void; for, although it might be a good custom or modus to excuse the parishioners from paying tithe of after-herbage of the land, the grass whereof had been made into hay, it could be no good modus as to the herbage tithe of other land.—3 Geo. 2. Canc. *For v. Ayde.* ii. 21

56. Tithe herbage shall not be paid for sheep depastured in the parish, and then removed into another parish and shorn; for they are *animalia fructuosa*.—5 Geo. 2. Scacc. *Poor v. Seymour.* ii. 31

57. Tithes are not payable for cattle used for the plough.—11 Geo. 2. Scacc. *Burslem v. Spencer.* ii. 65

58. No tithe is due or payable for the agistment of sheep, on lands for which tithes of hay or corn have been paid the same year.—15 Geo. 2. Scacc. *Chapman v. Keep.* ii. 87

59. There is no doubt at this day, that agistment tithe is a small tithe.—20 and 21 Geo. 2. Scacc. *Almond v. Master and Fellows of Trinity College.* ii. 106

60. Tithe of agistment is due for sheep agisted in the parish after shearing time until sold in the winter, notwithstanding tithe has previously been paid for the wool.

61. Tithe wool only discharges the herbage to the time of shearing, and not for any after feeding.—24 & 25 Geo. 2. Scacc. *Ryder v. Gould.* ii. 122

62. The tithe of agistment of unprofitable cattle is not by law 2s. in the pound, yearly, according to the value of the lands, but only after that rate during the actual time of agistment.—25 Geo. 2. Canc. *Forbes v. Phelps.* ii. 126

63. Tithe of wool is due at shearing time, and is a satisfaction for pasturage for the year past, ending at that time, but not for subsequent pasturage.—25 & 26 Geo. 2. Scacc. *Gold's case.* ii. 128

64. Tithes are not payable for agistment of cattle killed for the use of, and consumed in, the family of the occupier.—26 Geo. 2. Scacc. *Robinson v. Tunstall.* ii. 141

29 & 30 Geo. 2. Scacc. *Hele v. Bragg.* S. P. *ib.*

65. Tithe of agistment of cattle fed on turnips, sold whilst growing, and eaten by the cattle of the purchaser of the crop, is payable by the occupier of the land, and not by the purchaser of the turnips.—29 Geo. 2. Scacc. *Kirshaw v. Isles.* ii. 149

66. *Semble*, that tithe is due for the agistment of carriage horses, kept by the occupier. 2 Geo. 3. Scacc. *Thorpe v. Bendlowes.* ii. 193

67. Tithe of agistment is due for sheep agisted in the parish after shearing time until sold.—9 Geo. 3. Scacc. *Willis v. Harvey.* ii. 229

68. Where the occupier of a farm in the parish of A. prescribed for common of pasture for a certain number of sheep on land in the parish of B. in which such sheep were occasionally agisted, and tithe-wool, or a satisfaction in respect thereof, had been immemorially paid to the rector of A. as often as the sheep were shorn in that parish, and it had been the constant usage to shear them there; held, that this was a good defence against the claim of the vicar of B. for agistment-tithe for the time the sheep were depastured in his parish, though he derived no profit as tithes from them.

69. Tithe of wool may be due in one parish, and tithe of agistment in another.—12 Geo. 3. Scacc. *Ellis v. Fermor.* iii. 1242

70. Agistment tithe was holden to be payable for sheep, depastured on lands from the time of the last shearing until they were sold off fat, and taken out of the parish for sale before the next shearing time, notwithstanding the sheep from time to time sold or removed, were immediately replaced by others, which were depastured in their stead, until the next shearing day, when they paid a full tithe in kind to the impropiator or his lessee, who was entitled to the tithes of wool and lamb, the tithe of the agistment in question being due to the vicar.

71. Custom to pay 4d. for every beast sold or removed, in lieu of the tithe of agistment thereof, provided such beast was above a year old, and had been agisted above one month, but not otherwise, established.—14 Geo. 3. Scacc. *Bateman v. Aistroppe.* ii. 284.

72. Agistment tithe is not due for beasts of the plough, used in the parish, their labour being a satisfaction for the tithe. *Secus*, of beasts of the plough used in another parish.—18 Geo. 3. Scacc. *Bosworth v. Limbrick.* ii. 310

73. Agistment-tithe is the tithe of the herbage eaten by cattle not titheable; it is not tithe of the improvement of the cattle.

74. Agistment-tithe is not within the 2 and 3 Edw. 6. c. 13. s. 3.—30 Geo. 3. Scacc. *Ellis v. Saul.* ii. 360

75. Payment of a composition for the tithes of turnips, whether pulled or eaten off the ground, where neither party considered it as an agistment-tithe, is no evidence of perception of that species of tithe.—33 Geo. 3. Scacc. *Garnons v. Barnard.* ii. 380

76. Horses kept on one farm for its cultivation, and used occasionally on another farm in

a different parish, shall not pay agistment-tithe; otherwise, if habitually so used.—35 Geo. 3. Scacc. *Filewood v. Button.* ii. 416

77. Sheep kept principally for the sake of folding, if sold out of the parish before shearing time, shall pay agistment-tithe.—35 Geo. 3. Scacc. *Howes v. Carter.* ii. 416

78. Agistment is a prædial tithe.—36 Geo. 3. Scacc. *Scarr v. Trinity College, Cambridge.* ii. 429

79. The agistment of sheep is not included under the general description of agistment of barren and unprofitable cattle; and where a bill, therefore, claimed tithes of barren and unprofitable cattle, not expressly stating sheep, the court thought the defendant misled by the looseness of the demand, and refused to direct an account of the agistment of sheep, though the plaintiff proved that sheep had been agisted.—37 Geo. 3. Scacc. *Turner v. Williams.* ii. 436

80. A vicar founding his claim to agistment-tithe by showing, that he alone had taken the other small tithes, was holden to have made out his title to that tithe, although the same had never till of late been received or demanded by him or his predecessors, and although in ancient times the crown had conveyed by grant to lay impropriators, tithes not only of grain and hay, but of herbage (*decimas feni et herbagii*).

81. Herbage does not *ex vi termini* mean a cover tithe of agistment, unless perception be proved.—56 Geo. 3. *Byam v. Booth.* iii. 716

82. Agistment-tithe is not payable for after-pasture, where the lands have been mown in the same year, and tithe of hay has been paid.—58 Geo. 3. Canc. *Batchellor v. Smallcombe.* iii. 909

83. A title to tithe-hay does not confer a title to agistment-tithe.—5 Geo. 4. Scacc. *Lewis v. Young, Bart.* iii. 1135

AGREEMENT.—See COMPOSITION—LEASE —TITHES HOW PASSED.

1. An agreement between the parson and any of his parishioners is good cause for prohibition, for the spiritual court will not allow the plea.—31 El. B. R. *Gomersal v. Bishop.* i. 97

2. The farmer of a rectory, in consideration that a plaintiff promised and agreed to pay to him ten pounds per annum, during a term, for his tithes, promised that the plaintiff should hold his said land without tithes, and without any suit for the same, by GAWDY. The same is a good discharge of the tithes for a time, and a good composition to have a prohibition upon, and it is not like a covenant.—31 El. B. R. *Chapman v. Hurst.* i. 98

3. An agreement to be discharged from tithes, may be for a year by *parol*, and shall be good:

but to have such an agreement during the parson's life, or for years, cannot be without deed.—4 Jac. B. R. *Hawkes v. Brayfield.* i. 165.

4. If a parson contract with me by word, for keeping back my own tithes for three or four years; this is a good bargian by way of retainer; and if he sue me for my tithes in the ecclesiastical court, I shall have a prohibition upon this composition. But if he grant to me the tithes of another, though it be but for a year, this is not good, unless it be by deed.—8 Jac. B. R. *Anon.* i. 198

5. An agreement that one shall retain his tithes, made after the corn sown, and for the same year, is good; but not if made before the corn is sown, or for more years than one; and all the court agreed that such an agreement for the tithes of another was void.—8 Jac. C. B. *Anon.* i. 198

6. A parol agreement to pay 2s. 6d. in the pound rent for tithes, will not bind the parson, but it will excuse the parishioners from the penalties and damages given by 2 E. 6. and from costs till notice given of his dissent from the agreement; and notice given after payment due is too late: and so it is if given after the lands are manured and sowed; because, perhaps, if notice had been given before, they would not have been at so great a charge upon them, or not have sown them at all.—13 Car. 2. Scacc. *Breamer v. Thornton.* i. 436

7. The court inclined to grant a prohibition on a parol agreement to retain, having been several years paid, but being an unsettled point, it was adjourned; but agreed that on *nil debet* such agreement is a good mitigation of damages; also if the execution of the agreement by several years payment be suggested, a prohibition ought to go.—24 Car. 2. B. R. *Knight and others v. Peepes.* i. 495

8. By BURY and PRICE. A composition by way of retainer of tithes by parol for one year, is good, but not by way of lease. MOUNTAGUE thought that an agreement between parson and parishioner would be good by parol for years, though not for life.—1 Geo. Scacc. *Keddington v. Bridgeman.* i. 709

9. A parol agreement with a parishioner to retain his tithes for three years, is good.—S. C. *ib.*

10. Where it appeared from the bill of the plaintiff that he claimed tithes under a parol lease, the bill was dismissed, with costs.—2 Geo. Scacc. *Sworder v. Bush.* i. 717

11. Where an agreement having been made between the rector and inhabitants of a parish, allotting lands in lieu of the ancient glebe, with some addition, in consequence of the rector's losing certain rights of common by inclosure, and also providing an annual pecuniary compensation in lieu of tithes, which upon the successors declining to abide by, an amicable

suit was instituted in this court, to which the ordinary (but not the patron, who was the king) was made a party, and the parishioners agreeing to increase the stipend, a decree was made by consent ratify the articles: held that this agreement, though acquiesced under for 80 years (40 of which, however, the rector against whom the decree was made, had remained incumbent), was not binding as to the pecuniary composition, the patron not having been a party, and the composition having been made only with regard to the past, and not to the future increasing value of the tithes.—5 Geo. 3. Canc. *Att.-Gen. v. Cholmley*. ii. 203

12. An agreement between a rector and his parishioners for an allotment of land in lieu of tithes, though confirmed by a decree in Chancery, is not binding on a succeeding incumbent.—20 Geo. 3. Scacc. *Jones v. Snow*. iii. 1291

13. On an agreement to pay a certain sum yearly for tithes, without any precise time of payment being fixed, no interest is payable on arrears.—43 Geo. 3. B. R. N. Pr. *Shipley v. Hammond*. ii. 507

14. If the bargainee of tithes for one year underlet them to the several occupiers of the land, no notice to determine the underletting needs to be given by another bargainee of the same tithes for the following year.—50 Geo. 3. C. B. *Cor v. Brain*. ii. 582

15. Where a house, lands, and tithes, are held under a parol demise at a joint rent, a notice to quit "the house, lands, and premises, with the appurtenances," includes the tithes, and is sufficient to put an end to the tenancy.

16. *Semble*, that although tithes are let by parol the tenant is entitled to a notice to quit.—51 Geo. 3. N. P. *Doe dem. Morgan v. Church*. ii. 649

ALDER.—See Wood.

ALIEN PRIORIES.

1. The possessions of Alien Priories given to the king.—2 Hen. 5. iv. 17

2. Lands held discharged from tithes before time of memory, by one of the alien priories, coming to the crown on their suppression, are no longer exempt.—44 Geo. 3. Scacc. *Penfold v. Groome*. ii. 536

ALTERAGIUM.

1. There is a usage here laid in the vicar to have the tithe-wood, by reason of these words, *alteragia et minutæ decimæ*, which the vicar can in no wise have, but by prescription, or by such a usage; and so the same may pass by these words, *alteragia et minutæ decimæ*, and the usage had accordingly: also sheaves of corn have

passed by usage to the vicar, by the words *alteragia et minutæ decimæ*, and so it was adjudged in the court of exchequer. The judges all agreed in this, that by these words, *alteragia et minutæ decimæ*, by usage, tithe-wood may well pass, and so has the opinion of all the civilians been.—10 Jac. B. R. *Reynolds v. Green*. i. 213

2. Tithes of wool and lamb may pass under the words alterage and small tithes, (where the usage was shewn in evidence.)—16 Jac. B. R. *Britton v. Ward*. i. 298

3. *Alteragium* shall be expounded according to the usage.—4 Car. C. B. *Wood v. Greenwood*. i. 368

4. Where *alteragium* has by usage been extended to small tithes, it will include them, otherwise not.—7 Geo. Scacc. *Franklyn and others v. Master and Brethren of St. Cross*. i. 768

5. The precise meaning of the word "*alteragium*" is now unknown, and what is included under it can only be explained by usage.—57 Geo. 3. Scacc. *Williams v. Price*. iii. 828

ANNUITY.—See JURISDICTION.

1. Where, upon dispute to whom certain tithes belonged, it was settled, that one should take the tithes, paying an annuity to the other, it was held that the annuity might be recovered in the temporal court, it being founded on a lay contract, and the tithes not in plea.—7 Edw. 2. *The Abbot of Aungers v. The Prior of Norton*. i. 7

APPEAL.

1. The tithe of a rectory which belonged to a dissolved abbey, was granted by the crown, the parson files his bill against the occupiers, bill dismissed, but in respect of his being a pauper, without costs. He afterwards appealed, and in consequence of its frivolous nature, by an order of the House of Lords, on the 3d of March, 1697, it was ordered, "That no person whatsoever do presume, as counsel, to sign any appeal, to be brought into this House for the future, unless such person hath been of counsel in the same cause, in the courts below, or shall attend as counsel at the bar of this House, when the said appeal shall come on to be heard. And it is further ordered, that this order shall be added to the roll of standing orders, and affixed on the doors of this House, and of the courts in Westminster Hall."—1 Geo. Dom. Proc. *Turner v. Smith*. i. 712

APPLES.

1. In a suit for tithes of apples, defendants said they were stolen and never came to his use; it was held, that if a man suffered an-

other to pull his apples, the parson should have tithes; but if they were taken by persons not known, he should not have tithes. (According to Yelverton) they are not titheable before plucking, but if they are suffered by negligence to hang so long that they are embezzled, tithes shall be paid.—4 Car. C. B. *Anon.* i. 366

2. Tithes are due of apples fallen as well as other apples.—8 W. 3. Scacc. *Harding v. Golding.* i. 618

3. An account of such apples as fall from the trees ordered.—2 Ann. Scacc. *Lister v. Foy.* i. 654

APPROPRIATION.—See IMPROPRIATION.

1. In every license henceforth to be made in the chancery, of the appropriation of any parish church, it shall be expressly contained and comprised, that the diocesan of the place, in the appropriation of such churches, shall ordain, according to the value of such churches, a convenient sum of money to be paid and distributed yearly of the fruits and profits of the same churches by those that shall have the said churches in proper use, and by their successors, to the poor parishioners of the said churches, in aid of their living and sustenance for ever; and also that the vicar be well and sufficiently endowed.—15 Ric. 2. c. 6. iv. 13

2. The right of patronage must be in succession before an appropriation can be made, and the question of appropriation shall be tried in the spiritual court.—38 Hen. 6. i. 39

3. The stat. of 15 Ric. 2. c. 6. confirmed, and if any church be appropriated by license of the said King Richard, or of our Lord the King that now is, since the said fifteenth year, against the form of the said statute, the same shall be duly reformed according to the effect of the said statute, betwixt this and the feast of Easter next coming. And if such reformation be not made within the time aforesaid, that the appropriation and license thereof made be void, and utterly repealed and annulled for ever, except the church of *Haddenham*, in the diocese of *Ely*.—2 Hen. 4. c. 12. iv. 16

4. All appropriations of vicarages since the first year of King Ric. 2. shall be void. *ib. ib.*

5. Form of appropriation.—*Hen. 6.* iv. 19

6. Complaint of the Commons respecting the abuses of appropriation.—10 Hen. 6. iv. 20

7. Appropriations, how and when to be made.—*Grendon v. the Bishop of Lincoln.* i. 67

8. An appropriation made 24 Hen. 8. by license of the bishop shall be intended to be good, and to have all requisite circumstances, though there were not any endowment of the vicarage, for appropriations shall not now be called in question.—8 Jac. B. R. *Hunston v. Cocket.* i. 196

9. Appropriation shall be tried at common law.—13 Jac. B. R. *Owen v. All Saints in Northampton.* i. 248

10. Whether an appropriation since 25 H. 8. of a rectory to a lay corporation be good.

11. Whether an appropriation in default of the endowment of a vicar be good.—8 Car. B. R. *Alden v. Tothill.* iii. 1213

12. There ought to be the King's license to make an appropriation of a church, and to endow a vicar; and the King cannot make such a license without matter of record, and it ought to be with a condition to endow a vicar, which endowment may be by a distinct instrument, so that it be made at the same time as the appropriation.—1649. B. S. *Cave v. Osby.* i. 405

13. Where a rectory was granted by the crown in 1547, with license to appropriate on condition of endowing a vicar, and the vicarage had continued endowed through all time subsequent; but the instrument of endowment produced did not pursue the terms of the grant, and the specific benefits actually enjoyed by the vicar did not appear; the court presumed a second deed in conformity with the conditions of the original license, and that it had been lost by time, or accident.—5 Geo. 4. Scacc. *Wolley v. Brownhill.* iii. 1152

ASP.—See Wood.

ASSART.

1. *Semble*, that the words *de novo assartatis et assartandis*, in the grant of Ed. 1. should be confined to such lands only as were at that time assarted or were intended shortly to be so.—5 Geo. 2. Scacc. *Bond v. Burrow.* ii. 32

2. An assart is, where persons having lands within a forest could not pluck up timber by the roots without an application to the crown *ad quod damnum*; and if it was returned that there was no damage, a license was given to assart.—38 Geo. 3. Scacc. *Parry v. Harvey.* iii. 1376

ASSUMPSIT, ACTION OF.

1. If tithes be leased by deed, debt lies for the rent; but if without deed assumpsit, it being only a reciprocal and executory contract.—6 Car. B. R. *Walrish v. Cropton.* i. 373

2. Action upon special promise for tithes for six years, held good upon motion in arrest of judgment; though such agreement be not a good lease, nor does any interest pass thereby in the tithes.—35 Car. 2. B. R. *Baton v. Sherwin.* i. 541

3. *Quære*, whether an action will lie upon a promise, that if the plaintiff would plant his

lands with hops, by which the tithes would be bettered, the defendant (the rector of the parish) would allow 40 shillings an acre towards the expenses, it being alleged that defendant had planted an acre.—22 Jac. C. B. *Summers v. Dugs.* i. 331

AUGMENTATION.

1. An Act for confirming and perpetuating augmentations made by ecclesiastical persons to small vicarages and curacies.—29 Car. 2. c. 8. iv. 185

2. Augmentations made by archbishops, bishops, deans, and chapters, &c. shall continue during the estate upon which they are reserved, and for ever afterwards. § 2.

3. No future augmentation confirmed, which shall exceed one moiety of the value of the rectory, out of which the same shall be granted or reserved. § 3.

4. Augmentation leases to be fairly entered in books of parchment, to be kept by their respective registers for that purpose; which entry, duly attested, shall be as a record; and a true copy thereof shall be good evidence to recover upon. § 4.

5. New leases without express continuance of the augmentations to be void. § 8.

6. An Act for the making more effectual her majesty's gracious intentions for the augmentation of the maintenance of the poor clergy, by enabling her majesty to grant in perpetuity the revenues of the first fruits and tenths; and also for enabling any other persons to make grants for the same purpose.—2 & 3 Ann. c. 11. iv. 194

7. Enlarged.—6 Ann. c. 27. iv. 202

8. An Act for discharging small livings from their first fruits and tenths.—5 Ann. c. 24. iv. 201

9. Ecclesiastical benefices not exceeding 50*l.* per annum discharged from payment of first fruits, &c. for ever. § 1.

10. Bishops, &c. to certify into the Exchequer the clear yearly value of small benefices, with cure of souls within their dioceses, &c. § 2.

11. An Act to make more effectual her late majesty's gracious intentions for augmenting the maintenance of the poor clergy.—1 Geo. stat. 2. c. 10. iv. 206

12. The bishops shall inform themselves of the yearly value of every benefice, &c. and certify the same to the governors of Queen Anne's bounty.

13. Certificates returned into the Exchequer under preceding acts shall ascertain the value of livings not exceeding 50*l.* per ann. § 2.

14. Augmentations, &c. to be entered, and the entries to be taken as records, and copies admitted in evidence § 19.

15. An Act for the better collecting and levying the revenue of the tenths of the clergy.—3 Geo. c. 10. iv. 212

16. An Act for making certain regulations respecting the admission of persons to cures augmented by Queen Anne's bounty, with respect to the avoidance of other benefices.—36 Geo. 3. c. 83. iv. 230

17. An Act for effectuating certain parts of an Act, passed in the second and third years of the reign of her late majesty Queen Anne, intituled, "An Act for the making more effectual her majesty's gracious intentions for the augmentation of the maintenance of the poor clergy, by enabling her majesty to grant in perpetuity the revenues of the first-fruits and tenths, and also for enabling any other persons to make grants for the same purpose," so far as the same relate to deeds and wills made for granting and bequeathing lands, tenements, hereditaments, goods, and chattels, to the governors of the bounty of Queen Anne, for the purposes in the said Act mentioned, and for enlarging the powers of the said governors.—43 Geo. 3. c. 107. iv. 249

18. 2 & 3 Anne, c. 11. s. 4. by which persons were empowered to grant estates, &c. in their own right to the governors of the bounty of Queen Anne, towards the augmentation of the maintenance of the clergy, shall remain in force notwithstanding mortmain act, 9 Geo. 2. c. 36. Power of exchanging lands, &c. under 1 Geo. 1. c. 10. s. 13. extended to all the lands, &c. of augmented livings.

19. Where there is no suitable parsonage-house, the governors may provide one. *ib.*

20. An Act for making more effectual the gracious intentions of her late majesty Queen Anne, for the augmentation of the maintenance of the poor clergy, so far as relates to the returns of certificates into the Exchequer, and gifts of personal property.—45 G. 3. c. 84. iv. 254

21. Bishops, &c. shall inquire into value of benefices returned into the Exchequer, and certify the same to the governors of Queen Anne's bounty, who shall be empowered to act upon such new certificate as they are now enabled to do with respect to livings not returned into the Exchequer.

BARREN CATTLE.—See CATTLE.—
AGISTMENT.

BARREN LAND.

1. On a prohibition to a suit for tithes of wheat, the land being suggested to be lately improved, was proved so, but that tithes of wool and lambs had been always paid for it; though

by the statute the same tithes continue payable for seven years, the parson cannot have a consultation, for he has not sued for tithes of these.—1 & 2 El. *Pelles v. Saunderson*. i. 57

2. All such barren heath or waste ground, other than such as be discharged for the payment of tithes by act of parliament, which before this time have lain barren, and paid no tithes by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years next after such improvement fully ended and determined, pay tithe for the corn and hay growing upon the same; any thing in this act to the contrary in anywise notwithstanding.

3. Provided always, and be it enacted by the authority aforesaid, that if any such barren, waste or heath ground, has before this time been charged with the payment of any tithes, and that the same be hereafter improved or converted into arable ground or meadow; that then the owner or owners thereof, shall during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same before the said improvement; any thing in this act to the contrary in anywise notwithstanding.—2 & 3 Edw. 6. c. 13. ss. 5. 6. iv. 87

4. *Barren land* by the common law is that whereof no profit arises; and ground that has been stubbed, and after bears corn or grass, is not barren. *Waste ground* is such as no man can tell to whom it certainly belongs, and lies uninclosed and unbounded with hedge and ditch; but that which is inclosed and hedged and ditched, and the lord known, is not waste ground. *Heath ground* is understood to be that which is dispersed, and lies as common.—21 & 22 El. *Tanner v. Kirkham*. i. 81

5. Fen grounds drained are not barren land within the 2 E. 6. 38 El. B. R. *Anon*. i. 118

6. Lands drained, although overflown for time whereof, &c. or grubbed, shall pay tithes presently; for it is sterile but by negligence, and not such as is merely barren, and only made good by foldage, or other industrious means, which alone is within the 2 Ed. 6. c. 13.—38 El. B. R. *Sherington v. Fleetwood*. i. 132

7. *Barren land*, by the statute 2 E. 6. is such ground as will not bear corn of itself, without very great costs in the extraordinary manuring of it; but if the same will bear corn without any great labour and manuring (but only with charge in regaining it from being overflown), it shall pay tithes presently, for it ought to be *sudpte naturâ barren*, or it shall not be within this statute and the clause of discharge; for if one gain land from the sea, which afterwards bears good corn, of this he shall pay tithes.

8. Wood ground is not barren ground within 2 E. 6. for if one stub up the wood, and convert it into arable with great cost and labour, yet he shall pay tithes for it presently.—14 Jac. B. R. *Witt v. Buck*. i. 254

9. If land were mere waste and yielded nothing, no tithe shall be paid for seven years; but if sheep were kept upon it, or it yielded any titheable profit, that tithe ought to be paid.—5 Car. C. B. *Flower v. Vaughan*. i. 370

10. The trial whether land be barren or not must be at common law.—13 Car. 2. B. R. *Anon*. i. 435

11. Upon an issue at law the jury found that the lands in question, which had been recovered from the sea, were not naturally barren, and that they were not comprehended within the stat. 2 E. 6.—20 Car. 2. Scacc. *Gauden v. Gilbert*. i. 476

12. Derelict lands reclaimed from the sea, and rendered arable, are subject to pay tithes. 2 W. & M. Scacc. *Alcock v. Hilyard and Le Grand*. i. 563

13. Wood land converted into tillage is not barren within 2 E. 6., but only such land as before produced no benefit to the owner.—9 W. 3. Scacc. *Anon*. i. 625

14. Barren land to be exempted by the statute, must be such as is barren *sudpte naturâ*, and not land upon which wood or the like grew before, which is afterwards burnt, and the land tilled.—2 Ann. C. B. *Anon*. i. 654

15. If land yield any profit before, as wood, &c. it is not within the stat. as barren land, which ought to be *sudpte naturâ sterilis*; and no prohibition will in such case be granted, unless there be an affidavit that it was pleaded below.—2 Ann. B. R. *Horner v. Bonner*. i. 657

16. Embanked lands are not exempt from tithes for seven years under 2 E. 6. c. 13. sect. 5. as barren.—7 Geo. Scacc. *Hankin v. Fotheringham*. i. 772

17. Wood ground grubbed up is not exempted for seven years as barren land, within the stat. Ed. 6. as it yielded profit before.—10 Geo. Scacc. *Beardmore v. Gilbert*. i. 794

18. Heath land converted at considerable expense into meadow and arable land, held not to be barren land within the statute 2 & 3 Ed. 6.—5 G. 2. Scacc. *Doyley v. Hornby*. ii. 32

19. The rule by which the court decides whether land be barren within the statute 2 Ed. 6. c. 13. is, if land is in its own nature so barren as not to be proper for agriculture after it is improved, it shall not pay tithe: but if, in its own nature, it is fit for tillage; but by reason of wood, or other accidental circumstance, it was not turned into tillage before, on taking away that accidental circumstance, it shall pay tithes immediately on being turned to tillage;

for the act does not consider the expense.—21 & 22 G. 2. Canc. *Stockwell v. Terry.* ii. 118

19. Common lands newly inclosed, not producing a crop without extraordinary labour and expense, are exempt from tithes for seven years, under stat. 2 & 3 Edw. 6.—20 G. 3. Scacc. *Hutchins v. Maughan.* iii. 1290

20. Lands of a boggy and rushy nature, requiring very considerable expense in stubbing, draining, ploughing, liming, and manuring, and of so swampy a description, that cattle could not go on it without being lost; and when drained, ploughed, and sown, could not be harrowed by cattle, but by men only; and the crops from which, it was estimated, could not compensate for the expense of inclosing it under 20 years, was held to be clearly barren land within the statute 2 & 3 Edw. 6.—25 G. 3. Canc. *Byron v. Lamb.* iii. 1337

21. Land, if not naturally barren, but in its nature fit for tillage, is not within the protection of the statute 2 & 3 Edw. 6. notwithstanding great expense may be necessary for the draining, inclosing, and manuring of it.—31 G. 3. Scacc. *Jones v. Le David.* iii. 1362

22. The rule of law for determining what is barren ground within stat. 2 & 3 Ed. 6. c. 13. is whether the land is of such a nature as to require an extraordinary expense in the manuring or tilling, to bring it into a proper state of cultivation; and not whether it is or is not in its nature so fertile as, after being ploughed and sown, to produce of itself without manuring or tillage a crop worth more than the expense of ploughing, sowing, and reaping. Land which is of a good natural quality shall pay tithe immediately, notwithstanding the stat. 2 & 3 Edw. 6. c. cap. 13., although the expense attending the breaking it up and liming it exceeds the return made to the farmer in the several first years of cultivating it.—54 G. 3. B. R. *Warwick v. Collins.* ii. 679

23. In an action for not setting out tithes, the *onus* of proving that the land is barren, lies on the defendant.

24. The proper test of barrenness within this statute, is, whether the land requires extraordinary expense either in manure or labour, to bring it into a proper state of cultivation.—55 G. 3. C. B. *Lord Selsea v. Powell.* iii. 714

25. Where the defendants to a bill for tithes set up a claim of exemption under the 2d & 3d Edw. 6. cap. 13. and produced strong evidence of the land in question requiring to be cleared and levelled, and that it gave more than usual trouble in ploughing, and cost more than the customary expense in manuring it with lime; the court directed an issue, to try whether the lands of which the tithes were demanded, “were of such a nature as (exclusive of the labour and expense of clearing the same

from furze or whins, and preparing the same for ploughing) necessarily required extraordinary expense of liming and manuring, or labour, to bring them into a proper state of cultivation.”—57 G. 3. Scacc. *Kingsmill v. Billingsley.* iii. 791

BEANS.—See PEASE.

BEASTS.—See AGISTMENT.

BEECH.—See WOOD.

BEEES.—See HONEY.

BIRCH.—See WOOD.

BOUNDARIES.

1. Questions of boundaries are to be tried at common law.—3 Edw. 2. i. 7
S. P. 39 Edw. 3. i. 21
50 Edw. 3. i. 27
5 Hen. 5. i. 30
6 Edw. 4. i. 43
22 Edw. 4. i. 47
13 Jac. B. R.
Foster v. Hyde. i. 247.

2. In a case referred from the chancery to the parliament, on account of its difficulty, a prohibition was refused, *after sentence*, upon a surmise that the question was, by the words of the libel, concerning the boundaries of the meadow in which tithes were claimed, and not merely concerning the tithes.—9 Hen. 5. i. 31

3. Boundaries of parishes are triable by the common law, not by the spiritual, for the Pope has ordained, that tithes shall be paid within the parish, but has not distinguished parishes.—33 El. B. R. *Stransham v. Cullington.* i. 101

4. The spiritual courts shall not try the bounds of parishes.—2 Jac. *Phillips v. Slack.* i. 160

5. Though the bounds of a parish are not triable in the spiritual court, yet the bounds of vills in the same parish are. (*Quære*, the difference?—*Sid.*)—14 Car. 2. B. R. *Butler v. Yateman.* i. 437

6. No prohibition will be granted on suggestion that lands lie within the precincts of a free chapel, and that the bounds thereof are triable at common law, as the bounds of a parish are.—18 Car. 2. B. R. *Reeves v. Bould.* i. 447

7. On suggestion that the lands of which tithes were demanded lay out of the parish, the bounds whereof are triable at common law; prohibition was denied, because it did not appear that such plea had been offered in the spiritual court.—31 Car. 2. B. R. *Anon.* i. 521

BRICKS.—See TITHES, for what payable.

BROOM.

1. A question was moved to the court, whether tithe should be paid of heath, turf, and broom? And the opinion of *SUIT, J.* was, that if they have paid tithe wool, milk, calves, &c. for their cattle which have gone upon the land, that they should not pay tithe of them. But some doubted of it, and conceived, that they ought to say, that they have used to pay those tithes for all other tithes; otherwise they should pay tithe for heath, turf, broom, &c.—29 El. B. R. *Anon.* i. 90

2. The court seemed inclined to think that broom is titheable, unless it be stubbed up to make way for the plough, upon land barren, within the statute 2 E. 6.—13 Jac. B. R. *Mascall v. Price.* i. 225

3. A prohibition granted to suit for tithes of broom burnt in a house of husbandry.—28 Car. 2. B. R. *Dr. Wat's case.* i. 508

4. Tithes decreed of broom made into bavins. 6 W. 3. Scacc. *Biggs v. Martin.* i. 585

BULLS.—See EVIDENCE.

1. No person, religious or secular, of what estate or condition he be, by colour of any bulls, containing such privileges, to be discharged of tithes pertaining to such parish churches, prebends, hospitals, or vicarages, purchased before the first year of King Richard II. after the conquest, or since not executed, shall put in execution any such bulls so purchased, or any such bulls to be purchased in time to come. And if any such religious or secular person, of what estate and condition he be, henceforth, by colour of such bulls, trouble any person of holy church, prebendaries, wardens of hospitals, or vicars, so that they cannot take or enjoy the tithes due or pertaining to them of their said benefices, that then such disturbers shall incur like process and pain as is ordained by the statute made against them of the order of *Cisterians*, in the second year of the reign of our said Lord the King that now is.—7 Hen. 4. c. 6. iv. 17

2. All bulls and dispensations from the Bishop or See of Rome to any subjects of

this realm shall be void.—28 Hen. 8. c. 16. iv. 38

3. The effect and contents of bulls purchased of the See of Rome, which are allowable, shall be confirmed under the great seal.—*Ib.* § 6. iv. 39

4. A pope's bull may be pleaded as inducement to a title, notwithstanding 28 H. 8. c. 16. that all briefs, bulls, &c. of the pope shall be void, and not pleaded, used, or allowed in any court.—31 Car. 2. B. R. *Etherington v. Archbishop of York.* i. 521

5. The pope's bull, exempting the order of the Præmonstratenses from tithes, did not in fact exempt that order from the payment of tithes even of lands in their own occupation, unless the bull was received and allowed in England.—2 G. 3. Scacc. *Townley v. Tomlinson.* ii. 189

CALVES.—See MODUS, Calves.

1. The owner of a single calf shall, of common right, pay the tenth part of its value when taken from the cow, in lieu of tithes.—5 W. & M. Scacc. *Kenyon v. West.* i. 582

2. Calves, in kind, to be delivered at the will of the owner, after they were three weeks old, and at such time of the year as the owner might think best to spare them, not hindering his breed, the parson, if he delayed the fetching, to pay for the keeping; bad for uncertainty and unreasonableness, being vitiated by the qualifications of the delivery at will, and the parson to pay for the keep until delivered.—58 G. 3. Scacc. *Jenkinson v. Royston.* iii. 896

3. The right of a parson to the tithes of calves accrues when they are dropped; though the tithe cannot be set out or taken until they have arrived at a proper age to be weaned.—59 G. 3. C. B. *Welch v. Uppill.* iii. 963

CANONS.

1. Several canons have been prejudicial to the King's prerogative, and to the laws and statutes of this realm.

2. The clergy shall not enact any constitutions or ordinances without the King's assent.

3. The King may assign thirty-two persons to examine the canons, and to continue such as they think worth, and to abridge the residue.

4. Provided always, that no canons, constitutions, or ordinances shall be made or put in execution within this realm by authority of the convocation of the clergy, which shall be contrary or repugnant to the King's prerogative royal, or the customs, laws, or statutes of this realm.

5. Provided also, that such canons, consti-

tutions, ordinances, and synodals provincial being already made, which will not be contrary or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's prerogative royal, shall now still be used and executed as they were afore the making of this act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the tenor, form, and effect of this present act.—25 Hen. 8. c. 19. iv. 27

6. It was resolved by two Chief Justices, and divers other Justices at a committee before the Lords in parliament: 1. That a convocation cannot assemble at their own, or at the Archbishop's convocation, without the assent of the king, *i. e.* by writ. 2. That after their assembly they cannot confer together to make any canons without the license of the king. 3. When they upon conference conclude any canons, yet they cannot execute any of them without the royal assent. 4. They cannot execute any after the royal assent, but with these four limitations. 1. That they be not against the prerogative of the king; 2. Nor against the common law; 3. Nor against any statute law; 4. Nor against any custom of the realm. 2 Hen. 6. 13. A convocation may make constitutions, by which those of the spirituality shall be bound, for this, that they all, either by representation or in person, are present, but not the temporality.—8 Jac. Dom. Proc. Case of *Convocations*. i. 192

7. If the king and clergy make a canon, it binds the clergy in *re ecclesiastica*, but it does not bind laymen; they are not represented in convocation; their consent is neither asked nor given.—1 Ann. B. R. *Matthew v. Burdett*. i. 650

CARRYING AWAY TITHES.

See SETTING OUT TITHES.

CASE, ACTION ON THE.—See SETTING OUT TITHES.

1. An action upon the case lies for suing in the Spiritual Court for tithes, where there is a discharge by real composition, and it is one of the few cases where a man may recover damages for vexation of suit.—8 Edw. 4. i. 44

2. A parson granted to one of his parishioners, that he should hold his lands discharged of tithes: it was holden by the whole court, that the same was no good discharge, being without deed, as a lease of his tithes. But it was holden, if the parson afterwards sue the parishioner for tithes against the same grant and promise, the parishioner may have an action upon the case against the parson upon his

promise, although he cannot plead the grant as a lease.—28 El. B. R. *Wellock's case*. i. 89

3. If a parson by deed compound for his tithes, and after sue for them in the spiritual court, an action on the case lies; but where an action was brought for that, the parson sued for tithes, and recovered, because there was but one witness to prove the payment, which in fact had been made in the presence of two, but one was dead; held that it did not lie, for the cause was merely spiritual, and therefore differed from 8 E. 4. 13. for there the composition was a temporal contract, although it was for tithes.—43 El. B. R. *Bray v. Partridge*. i. 154

4. An action on the case does not lie for being sued in the spiritual court for tithe of gross trees; for it is lawful to try there whether they were gross trees or not; but if one be sued for what is not suable there, and of which the spiritual court has no jurisdiction, it lies, for it is a suit for vexation.—4 Jac. B. R. *Waterhouse v. Bawde*. i. 164

5. If the parson do not carry away his tithes in convenient time, an action on the case lies against him.—15 Jac. C. B. *Dr. Brigman's case*. i. 289

6. If a man set out his tithe hay or corn, and the parson refuses to take it away, an action on the case lies; but no action on the case lies for suing in the spiritual court without cause.—21 Jac. B. R. *Wiseman v. Denham*. i. 328

7. The court thought that an action on the case for suing for tithes of hops, contrary to a *modus*, would not lie, though "falsely, maliciously, and knowingly, &c."—26 Car. 2. B. R. *Bishop's case*. i. 505

8. Case lies against the parson for not carrying away tithes in a convenient time after they are set out, and not trespass, which does not lie for a non-feasance.

9. The parishioner cannot put in his cattle and eat the corn tithes, if the parson do not carry them away.—8 W. 3. C. B. *Shapcott v. Mugford*. i. 618

10. An action lies against the sheriff where a man escaped, who had been arrested upon an *excommunicato capiendo* issued upon an excommunication for not obeying the sentence of the spiritual court for tithes and costs.—1 Ann. C. B. *Slipper v. Mason*. i. 646

11. Due notice having been given to the parson of the setting out of the tithes of fruit and vegetables in a garden, which were accordingly set out on the days specified in the notice; but the tithes were not removed for the space of a month afterwards, by which time they had become rotten; it was holden, that a notice given at the expiration of the month by the owner to the parson to remove the tithe-fruit and vegetables within two days, or an action

would be commenced against him, was sufficient notice of setting out the tithes to found an action for not removing tithes.

12. And due notices having been given of setting out tithes of garden vegetables and field barley on certain days between the 11th and 16th of September, a general notice on the 17th to the parson, to take away all the tithes of the owner's lands within two days, was likewise holden to be a sufficient notice to ground a similar action.—49 G.3. B.R. *Kemp v. Filewood*. ii. 570

13. In an action for not removing tithes, the court refused to grant a new trial, though the damages amounted to 150*l.* on a farm of less than 100 acres.

14. *Quære* if the owner of the land may distrain tithes as *damage-feasant* after a reasonable time. 51 G. 3. Scacc. *Baker v. Leathes*. ii. 604

15. In an action for not carrying away tithe, it was averred (by mistake), that the land was that year sown with grass; and it was not proved that the tithe was set out in a convenient manner for carrying away; but the jury found that it was set out according to the custom of the country. Held, that the variance, and the uncertainty as to the setting out of the tithe, were sufficient grounds for granting a new trial. But the plaintiff was allowed to amend on payment of costs.—5 G. 4. Scacc. *Hooper v. Mantle*. iii. 1163

16. Declaration in case for not carrying away the tithe of corn, alleging it to have been "lawfully and in due manner" set out, is sustained by proof, that the tithe was set out according to an agreement between the parties, though not according to the mode prescribed by the common law. Whether the crop has been left on the ground a reasonable time after the tithe has been set out, for the tithe-owner to compare his tenth part with the residue, is a question of fact for the jury, and not of law for the judge.—5 G. 4. B. R. *Facey v. Hurdon*. iii. 1172

CATTLE.—See AGISTMENT.

1. Where the plaintiff in prohibition alleged a custom to pay no tithes for barren cattle reared or employed for the plough, he must also allege that the cattle for which tithes were demanded were so reared or employed.—13 Jac. B. R. *Mascall v. Price*. i. 225

2. No tithe is due for cattle bred for the pail or plough; but those for sale are titheable.—20 Jac. C. B. *Anon.* i. 325

3. Prohibition to a suit for tithes of barren cattle, upon suggestion that they were bred for plough or pail.—15 Car. B. R. *Anon.* i. 399

4. No tithe is due of cattle bred for the plough or pail.—7 Geo. Scacc. *Hathway v. Edwards*. i. 771

CHANCERY.—See TITHES, *Chancery*.

CHANTRIES.

1. All colleges, chantries, hospitals, &c. having continuance for ever, and all their manors, lands, and hereditaments given to the King.—37 Hen. 8. c. 4. iv. 61

2. Other chantries, &c. dissolved.—1 Edw. 6. c. 14. iv. 73

3. Colleges, chantries, free chapels, &c. did not come to the crown by 31 Hen. 8. but by 1 E. 6. c. 14. only; and are therefore not entitled to a discharge of tithes under the former statute.

4. Although lands of a religious person that came to the crown by 1 E. 6. may be discharged of tithes by prescription, composition, &c. yet such general allegation is not sufficient without shewing how he was discharged, either by prescription, composition, or other lawful means.—38 El. B. R. *Green v. Balser*, or the Archbishop of Canterbury's case. i. 113

CHAPEL.—See CHANTRIES—CUSTOM.

1. Tithes are not natural parts of a chapel, although they be appurtenant by usage.—17 Jac. B. R. *Grubham v. Grate*. i. 313

2. A chaplain of a chapel not presentative, or donative cannot libel for tithes.—3 Car. B. R. *Anon.* i. 359

3. Before the distribution of parishes, as they are now fixed, the terms church and chapel were synonymous; and before the year 1285, *quare impedit* lay for a chapel as well as a church.

4. A church may be presented to as a chapel, and yet remain in right a church; and a chapel may commence a church by being presented and instituted to as such.—11 G. 3. Scacc. *Yateman v. Cox*. ii. 243

CHAPLAIN.—See CHAPEL.—TITHES, *to whom*.

1. A chaplain put in and removed at pleasure cannot claim tithes.—5 W. & M. Cam. Scacc. *Wild v. Acton*. i. 575

2. A king's chaplain extraordinary is not capable of a plurality within 21 H. 8.—12 W. 3 B. R. *Brown v. Mugg*. iii. 1233

CHERRIES.

1. Wild cherries are titheable.—32 Car. 2. Scacc. *Anon.* i. 527

2. Tithes are due of wild cherries.—11 Geo. Scacc. *Chapman v. Barlow*. i. 803

CHERRY TREES.—See Wood.

CHICKENS.

1. No tithes shall be paid of chickens because he pays tithes of the eggs.—15 Jac. B.R. 1 Ro. Abr. 642.

CHURCH.

1. Nothing can be appendant to a church but gross tithes; but to a manor with which a church is endowed, franchises may be appendant; and therefore on a plea by the parson that he and his predecessors had been seised of a franchise in right of his church for time, &c. held, that he ought to have alleged, that he found the church seised of the franchise, and have prayed aid of his patron.—Edw. 3. i. 16

CINQUEFOIL.—See CLOVER AND HAY.

1. The seed and stalk of cinquefoil to pay tithe as grass to the vicar who had tithe hay. Jac. 2. Scacc. Anon. i. 558

CISTERTIANS.—See BULLS—DISCHARGE—HOSPITALLEERS.

1. Such bulls as had been obtained by the Cisterians to be quit of payment of tithes of their possessions let to farm, or cultivated and occupied by others than by themselves, not to be put in execution.—2 Hen. 4. c. iv. 14

2. The owner of land of the Cisterians shall pay no tithes, but the tenant shall pay.—15 Jac. C. B. Anon. i. 262

3. Lands of the Cisterians (which were discharged *quandiu propriis manibus*, &c.) under lease, and consequently paying tithes at the time of the dissolution, shall be discharged when they return into the hands of the owner of the inheritance.—17 Jac. B. R. Porter v. Bathurst. i. 312

4. A prohibition was granted upon suggestion that the land belonged to a Cisterian abbey before the council of Lateran, 15 John, and had always been enjoyed discharged.—9 Car. B. R. Anon. i. 381

5. The council of Lateran, which discharged the order of Cisterians from payment of tithes, is a general law received in England, and if lands belonging to them were discharged of tithes from the time of that council, no after contract made by the abbot to pay tithes could dispense with the privilege, or make them

liable to tithes; and if there were any such agreement for payment of tithes before the council, yet as a general law that council had dissolved it, and the lands are discharged.

6. Lands belonging to the Cisterians before the second council of Lateran, which came to the King by 31 H. 8. held to be discharged, notwithstanding tithes had been paid for some two years.—1656. Scacc. *Staveley v. Ullithorne and others*. i. 418

7. Tenant in tail, who has an estate of inheritance in lands formerly belonging to the Cisterians; is within the privilege of that order, and the reversioner shall have it, because it was not interrupted but suspended only, while in the hands of particular tenants, but tenant for life or years is not privileged.—12 Car. 2. Scacc. *Wilson v. Redman and others*. i. 430

8. HALE, C. J. held, that an abbot of the Cisterian order might well renounce the benefit of his privilege.—16 Car. Scacc. *Sir W. Ingleby, Bart. v. Wyvell and Ullithorn*. i. 443

9. A suggestion that lands belonged to the Cisterians is not sufficient, without alleging that they were in the hands of that order at the time of the dissolution, and granted over by the King. And *Windham* said, the owner must be always in possession, for lessee of a patentee shall not have the privilege.—20 Car. 2. B. R. *Clerk v. Townsend*. i. 478

10. A bull to be discharged *quandiu propriis manibus* does not take away any prescription that was at common law before, so if it appear that the lands of Cisterians never paid tithes when in the hands of tenants, they may be so discharged under 31 Hen. 8.—25 Car. 2. B. R. *Fosset v. Francklin*. i. 501

11. Where lands had belonged to an abbey of the Cisterian order, under the value of 200*l.* per annum, and they were not privileged in the abbot's hands, tithes were decreed.—4 W. & M. Scacc. *Watts v. Watkins*. i. 572

12. Such lands only of the Cisterians as were held in their own hands, and belonged to them before the council of Lateran (which was held 1179) were discharged from the payment of tithes.—9 Geo. Scacc. *Lord v. Turk*. i. 778

13. Where it appeared that lands of the Cisterians were in tenants' hands, when they came to Hen. 8. the court held that they were consequently not discharged; but *quære*, as Chief Baron PARKER said the reporter had misrepresented the case.—S. C. i. 778

14. Lands formerly belonging to a Cisterian abbey were held to be discharged of tithes whilst in the manurance of the owner, though such lands were in lease at the time of the dissolution of the abbey.—27 G. 3. Scacc. *Cowley v. Keys*. ii. 1351

15. Lands formerly belonging to an abbey of the Cisterian order and exempt from tithes

whilst in the manurance of the owner, were held to be exempt in the manurance of a tenant for life.—39 G. 3. Scacc. *Hett v. Meads*. iii. 1384

CLOVER.—See AFTERMATH.—See GRAIN—SEEDS—TARES.

1. The tithe of clover-grass is due to him who has the hay and grass, being no more grain than saffron, &c.—27 Car. 2. B. R. *Darrel v. Withers*. i. 505

2. *Quære*, Whether clover shall pay tithes as hay, when it stands for seed?—32 Car. 2. Scacc. *Woodford v. Standfast*. i. 527

3. Clover-grass threshed for seed titheable as hay.—32 Car. 2. Scacc. *Pomfret v. Lander and others*. i. 527

4. EYRE said, it had been ruled at the assizes that if a man sow his land with clover, and make his profit by the seed, this being a grain the parson shall have tithe of it; but if he convert into hay only, and make his profit of the hay, the vicar being endowed of the tithe of hay, shall have it as a small tithe, except only such as is necessarily cut with the corn among which it grew.—5 W. & M. B. R. *Wharton v. Lisle*. i. 579

5. A custom to set out the first crop of clover in swathes, and to pay no tithes for the second crop, is not good.—3 Ann. Scacc. *Witherington v. Harris*. i. 664

6. Clover seed is a small tithe.—12 Geo. 2. Scacc. *Wallis v. Pain*. ii. 67

7. The tithe of clover seed must be set out in the stalk in the field, and not when the seed is gathered at the mill.—15 G. 3. Scacc. *Lloyd v. Bentley*. ii. 291

8. Clover-hay is titheable in the cock, not in the swathe.—34 G. 3. Scacc. *Collyer v. Howse*. ii. 413

COALS.—See QUARRIES.

1. Where a special custom for tithes of coals is denied, a prohibition lies.—19 Car. 2. B. R. *Tucker v. Gorges*. i. 453

COLESEED.—See PARSON AND VICAR.

1. Tithes of coleseed decreed to the rector and not to the vicar.—26 Car. 2. Scacc. *Wid-drington v. Barker*. i. 504

2. Coleseed a small tithe; where the vicar was endowed with all tithes whatsoever, other than the tithes of corn.—35 Car. 2. Scacc. *Fish v. Wimberley*. i. 540

COLLEGES.—See CHANTRIES.

COMMISSION.

1. A commission was issued to set out land in lieu of tithes, which had been long obscured during a lease.—12 Jac. Canc. *Hungate v. Cooke*. i. 247

2. Where some lands had been taken from certain demesne lands alleged to be covered by a modus, and some exchanged, the Court of Exchequer ordered a commission to ascertain the alterations.—19 Car. 2. Scacc. *Kent v. Webb and others*. i. 454

COMMON AND COMMONERS.

See INCLOSURE.

1. Commoners, or those who have a *profit apprender*, are not tenants or occupiers of the land.—12 Jac. B. R. *Cotes v. Warner*. i. 237

2. A modus for ancient inclosed lands does not extend to lands allotted upon inclosure to the owner of the ancient inclosed land, in lieu of right of commonage.—9 G. 2. Scacc. *Whieldon v. Harvey*. ii. 60

3. On an inclosure, to which the parson was a party, lands allotted in lieu of right of common, are covered by a modus which had been before paid for the right of common, and are not subject to tithes.—21 & 22 G. 2. Canc. *Stockwell v. Jerry*. ii. 118

4. Where a *modus* was payable in lieu of tithes of corn, grain, and hay, on a certain demesne, and by an act of parliament a common was inclosed, and 90 acres allotted to the owners of the demesne in lieu of common, and by a clause in the act it was provided, that the divided lands, before parcel of the common, should be holden by each person to whom the respective divisions were allotted, subject to the same charges and incumbrances as their former lands to which they were allotted and consolidated were before subject; it was held, that the *modus* did not extend to the allotted lands; as corn, grain, and hay could not be part of what grew on a common; for the tithes arising on a common could only have been those of agistment, or of lambs, wool, milk, and other tithes, properly the produce of a common; and that the exemption could not extend to any but those specific tithes; and the rector could have no benefit from this *modus*, which was confined to tithes of corn, grain, and hay, in respect of any species of tithes which could arise from the common, whilst it remained common.—3 G. 3. B. R. *Moncaster v. Watson*. ii. 192

5. By a grant of all tithes arising out of or in respect of farms, lands, &c. the tithes arising out of and in respect of rights of common, appurtenant to such farms or lands will pass.—38 Geo. 3. B. R. *Lord Gwydir v. Foakes*. ii. 470

6. A. having purchased an estate free from rectorial tithe, with a right of common thereto annexed; the common was afterwards inclosed under an act of parliament, and certain land was allotted to A. in lieu of his said right of common: held, that no tithe was payable in respect of the allotted land.—2 G. 4. B. R. *Steele v. Manns*. iii. 1063

(A. having purchased the tithes of an estate of which a right of common was parcel, held that after an inclosure the right to the tithes of the land allotted in lieu of the right of common, belonged to the owner of the tithes of the former estate. S. C.)

COMPOSITION—See AGREEMENT.

1. Where by a composition a prebendary and his successors were to have their election to take tithes in kind of certain lands belonging to an abbey of Cisterians, or five marks yearly, upon giving notice to the abbot, &c. the court held, that after the dissolution of the prebend and the abbey, the power of election was gone, as it could not then be made according to the composition.—16 Car. 2. Scacc. *Sir W. Ingleby, Bart. v. Wyvell and Ullithorn*. i. 243

2. An agreement made between a former rector and the lord of the manor, in 1593, established by the Exchequer, on the ground that it would be very mischievous and of dangerous consequence to question such ancient exchanges, and throw open such ancient inclosures, after so long an enjoyment on all sides, although it might not appear that the consent of the ordinary was at first had thereto, and a perpetual injunction issued to the rector to stay all suits brought or to be brought, touching any matter settled by the decree.—36 Car. 2. Scacc. *Atterbury v. Turner, Kt.* i. 543

3. It had been agreed between a former rector and his parishioners, that he should hold a certain quantity of land in lieu of tithes, and a prohibition was granted upon suggestion of a confirmation of this agreement by the rector, who sued in the spiritual court for tithes in kind.—11 W. 3. C.B. *Machin v. Moulton*. i. 644

4. A composition for tithes cannot be determined as to part, and continued as to the rest.—3 Geo. Scacc. *Reynel v. Rogers*. i. 729

5. A composition entered into by a rector with the occupiers for the payment of certain sums, in lieu of tithes, is not binding on the rector's successors.—3 Geo. 2. Scacc. *Brown v. Barlow*. ii. 19

6. A composition between a rector and his parishioners for a certain sum payable yearly in lieu of tithes, being determined by the rector's death before the end of the year, his successor is entitled to tithes in kind from the death, and the executor of the last incumbent to a proportion, according to the composition, to the time of his testator's death.—4 G. 2. Scacc. *Anon.* ii. 25

7. Compositions by parson, patron, and ordinary have been confirmed by decree, since the restraining statutes; but such compositions have always been presumed to be for the benefit of the church.—19 G. 2. Canc. *Douglas v. Vane*. ii. 103

8. Plea and answer to a bill for tithes, of an agreement between the defendant and the agent, as well of a former impropiator, as of the plaintiff after he became possessed of the tithes, to pay an annual sum in lieu of tithes, and of a tender thereof. Plea ordered to stand for an answer, and on the hearing bill dismissed with costs.—25 & 26 G. 2. Scacc. *Hilton v. Heath*. ii. 128

9. Where the occupiers of tithes had been under a composition with a preceding rector and vicar for small tithes, and the succeeding incumbent received the composition without giving any direct notice to determine the same, but merely indorsed on his receipts for the great tithes, "Take notice, you are under no agreement with me for your vicarial tithes." This was held a sufficient determination of the composition, and the occupiers were decreed to account for their tithes.—3 G. 3. Scacc. *Price v. Elvy*. ii. 201

10. A notice in January, to determine a yearly composition from Michaelmas to Michaelmas, is not a sufficient notice to entitle the parson to tithes in kind for the then current year.—10 G. 3. Scacc. *Walter v. Flint*. ii. 242

11. Where a composition for tithes subsisted, it was holden, that a notice by the rector, at any time before the expiration of the year, that he intended in the ensuing year to take his tithes in kind, was sufficient to destroy the composition.

12. *Semb.* that the usual time for giving notice to determine a composition is old Michaelmas-day; for the occupier should have an opportunity of cropping his land accordingly.—12 G. 3. Scacc. *Glass v. Caldwell*. iii. 1244

13. No composition for tithes made since stat. 13 Eliz. c. 10. is binding on any succeeding incumbent.—16 G. 3. Scacc. *Lloyd v. Mortimer*. ii. 302

14. A notice on the 8th September, to determine a composition for tithes from year to year, the year commencing on the 29th September, is not sufficient.—21 G. 3. Scacc. *Adams v. Waller*. iii. 1292

15. A notice too late to determine a compo-

sition in one year will not serve for the succeeding year.—27 G. 3. Canc. *Bishop v. Chichester*. iii. 1354

16. Whether notice is necessary to determine a composition where a *modus* is insisted upon, *Quere*.—34 G. 3. Scacc. *Atkins v. Lord Willoughby de Brooke*. ii. 406

17. If a composition for tithes is made by A. as proprietor, and he lease them to B. whose interest is afterwards put an end to by A. before any alteration is made in the composition, A. cannot determine it without a six months notice.—39 G. 3. C. B. *Wyburn v. Tuck*. ii. 480

18. Compositions for tithes cease on the death of the incumbent with whom they were made, at least as to his successor; but if the successor continue to receive the next payment due after the death of his predecessor he can only be accountable to the executors for such portion of it as the value of the tithes, if paid in kind, accruing due between the last composition received by the late incumbent and his death, would have amounted to, and not *pro rata*, according to the time which had run before his death from the last payment.—49 G. 3. B. R. *Williams v. Powell*. ii. 569

19. Where a composition for tithes had been long paid by the farmer, and two years before an action of debt brought on the statute 2 and 3 Ed. 6. c. 13. for not setting out the tithes, the vicar, in a conversation with the farmer, had demanded his tithes vicarial, on which the other tendered him 40s. (the annual composition,) which the vicar refused to take, but assigned no reason for his refusal; this was held to be no evidence of a notice to determine the composition, which notice ought to be unequivocal: and held also that the farmer, not having denied the vicar's right to tithe in kind before the action brought, was not precluded from taking the objection to the action at the trial, for want of a proper notice to determine the composition, analogous to a notice to quit land, by putting the vicar to the strict proof of his right to tithe in kind.—50 G. 3. B. R. *Fell v. Wilson*. ii. 577

20. A composition for tithes, received after the death of the incumbent by his successor, apportioned with reference to such part of the current year of the composition as the last incumbent lived.—54 G. 3. Canc. *Aynsley v. Wordsworth*. ii. 677

21. A parishioner who has compounded with the parson one year for his tithes, and has not determined the composition, cannot set up as a defence to an action for the next year's composition-money, that the plaintiff is *simoniacus*.—56 G. 3. C. B. *Brooksby v. Watts*. iii. 715

22. A *modus* void for uncertainty cannot be insisted on as a composition requiring notice to determine it.—57 Geo. 3. Scacc. *Wolley v. Hadfield*. iii. 775

23. Parol composition for tithes are merely personal and cease with the occupation of the tenant. The composition paid by the former occupier is *prima facie* evidence of value.—1818. *Paynton v. Kirkby*. iii. 1392

24. A composition for tithes is no lien on the land, but only a personal demand, recoverable as such at law: and therefore a motion for payment of a sum due in respect of a composition for tithes, out of a fund in court, the produce of growing crops on a farm, paid in by sequestrators, was refused, with costs.—59 G. 3. Canc. *Dickinson v. Smith*. iii. 949

25. Notice to determine a composition should be reasonable in point of time, and suited to the convenience of the farmer. A notice, given by parol, at the time of settling the annual amount of the tithes due, the tithe-owner telling the farmer that "for the time to come" he requires the tithes to be paid in kind, is sufficient, being in fact more than six months notice.

26. When the farmer pleads a composition as a *modus*, he cannot insist on the want of notice to determine the composition, his case being analogous to that of a tenant contesting his landlord's title.—59 G. 3. Scacc. *Leech v. Bailey*. iii. 953

27. In an action for not setting out tithes, where the defendant had been under a pecuniary composition with the plaintiff, it was holden, that parol evidence of the defendant's having stated that he refused to pay tithes, because there was a *modus* in the parish, and he was therefore not bound to set them out; and denying the plaintiff's right to take tithes was sufficient to determine such composition, without notice for that purpose.—59 G. 3. C. B. *Bower v. Major*. iii. 956

28. A tithe composition, being at a fixed sum from Michaelmas to Michaelmas, the tenant going away at Lady-day, must pay the whole composition to the ensuing Michaelmas.—4 G. 4. N. P. *Hulme v. Pardoe*. iii. 1117

29. A defendant cannot plead a payment as a *modus*, and afterwards insist upon the same payment as a composition, requiring six months to determine it.—5 G. 4. Scacc. *Wolley v. Brownhill*. iii. 1152

30. Composition for tithe from Michaelmas to Michaelmas is not determined by the tenancy of the land expiring at Lady-day, but there must be notice: therefore, where the tenant continued to hold part of the farm for her way-going crop, till Michaelmas following the end of her term: Held, that tender of composition to Lady-day, and setting out tithe upon the part thus occupied, is no answer to an action for a year's composition.

31. Notice to determine such composition must be similar to notice to determine a yearly tenancy; viz. six months.—5 G. 4. Scacc. *Hulme v. Pardoe*. iii. 1164

COMPOSITION REAL.—See UNITY—
DISCHARGE.

1. An acre of meadow given for the tithe of hay.—4 Hen. 3. i. 1
2. Twenty-six acres of land given by the king as a composition real in lieu of the tithes of *Podrynghey* park.—1 Ric. 3. i. 49
3. If it be alleged that a parson has a certain quantity of land in lieu of tithes, it need not be shewn how or by what title he holds it; but if he has it in any other manner than in lieu of tithes, he ought to shew it.—42 Eliz. B. R. *Austen v. Pigot*. i. 151
4. A real satisfaction for tithes, is where, of ancient time, land had been given by the consent of the patron and ordinary to the parson and his successors, in satisfaction of tithes out of other lands, which is a good discharge of tithes; and it cannot be sued for in the spiritual court, but at common law.—2 Inst. 490. iii. 1197
5. A surmise in a prohibition that an abbot to whom a rectory was appropriated, was seised in fee of a certain close, and took the profits thereof in lieu of the tithes of hay, is sufficient without saying it was given time immemorial in lieu of the tithes, which shall be intended.—16 Jac. B. R. *Moore v. Bullock*. i. 297
6. A real composition is when a sum of money or lands are given to the parson with the assent of the patron and ordinary, in recompense of tithes, then the land is discharged of tithes in specie, and the *modus* is made tithes; and upon the grant of the lands the grantee shall have the benefit of it; and a *modus decimandi* is maintained upon the ground of a presumption of such a composition which is lost.—11 Car. B. R. *Sydown v. Holmes*. i. 383
7. A real accord, though it be between spiritual persons, and of spiritual things, is only questionable at common law.—17 Car. B. R. *Hickocke v. Hickocke*. i. 401
8. To a bill for tithes, the defendants say that two parcels of lands, called Pale Piece and Butts Way, were formerly given to the owner of the rectory in lieu of the tithes of Doles Fen, and that a certain moveable lot or portion of Leizure Fen was also assigned by the lord of the manor of Wilberton, to the rector of the said parish, in lieu of the tithes of the said Fen. An issue directed to try, whether the lands were so assigned in lieu of tithes, and a verdict being found for the defendants, the bill dismissed with costs.—1 Ann. Scacc. *Mallabar v. Young and others*. i. 647
9. A custom alleged that the parson had enjoyed a meadow and several beast grasses in the parish in lieu of tithes, held void for the uncertainty.—10 G. Scacc. *Birch v. Stone*. i. 797
10. A custom that the rector had received and enjoyed a close, and the tithes of hay yearly growing upon three acres of meadow, in

lieu of all tithes arising upon the demesnes of a lordship, held good.—12 G. Scacc. *Gouge v. Clarke*. i. 825

11. A *modus* that the rector enjoys two meadows, called the Parson's Pieces, in lieu of the tithe of hay, except of certain lands called Berry Lands, found by verdict and established.—13 G. Scacc. *Mason v. Hype*. i. 827

12. It is impossible to say, whether three hundred years ago five acres might be a sufficient composition for the tenth part of the whole; and therefore the objection fails as to the inequality between five acres and two hundred.—14 G. 2. Canc. *The Archbishop of York v. Sir M. Stapleton*. ii. 83

13. A composition real is a charge upon lands given to a parson under a deed to which himself, the patron and ordinary were parties.—18 G. 2. Canc. *Ekin v. Pigot*. ii. 95

14. A real composition is, when an agreement is made with a parson or vicar, with the consent of the patron and ordinary, that lands shall, for the future, be discharged from the payment of tithes in specie, for a recompense made to the parson or vicar out of other lands.—20 & 21 G. 2. Canc. *Ekins v. Dormer*. i. 108

15. An issue was directed to try whether an ancient, lawful, and valid composition real was made before the reign of queen Elizabeth by the parson, patron, and ordinary of the parish, by virtue whereof certain sums of money were made payable to the rector, in lieu of all tithes, tenths, and other ecclesiastical dues and profits, arising within the parish and rectory.—13 G. 3. Scacc. *Bree v. Chaplin*. ii. 270

16. An alleged real composition is not supported by evidence of a *modus*.—17 G. 3. Scacc. *Robinson v. Appleton*. iii. 1268

17. *Semble*, that evidence of an immemorial payment only, without any other evidence, can only be proof of a *modus*; and not of a composition real; but this court would not disturb a verdict (finding the *modus*) on the ground of rankness, which was held to be a question for them to determine.—18 G. 3. *Heywood v. Nichols*. iii. 1272

18. In order to establish a real composition for tithes, the evidence must be such as to distinguish it clearly from a prescriptive payment.—29 G. 3. Scacc. *Hawes v. Swaine*. ii. 357

19. A real composition cannot be established without shewing the deed by which it was created, or proving its existence.—31 G. 3. Canc. *Heathcote v. Mainwaring*. ii. 366

20. The consent of the ordinary to a composition real may be presumed from length of time.—34 G. 3. Scacc. *Sawbridge v. Benton*. ii. 400

21. No evidence is sufficient to support a composition real unless it have some reference to a deed of composition.—37 G. 3. B. R. and Dom. Proc. *Knight v. Halsey*. ii. 438

22. An issue was directed to try whether the rector, for the time being, from time whereof the memory of man was not to the contrary, had held and enjoyed a certain coppice, called the Parson's Coppice, in lieu and discharge of the tithes of coppice and underwood, yearly arising, renewing, and increasing, within the parish and rectory, and the titheable places thereof. And on the trial the *modus* was established. *Semble*, that reputation supported by uniform non-payment is sufficient evidence of exemption where the *modus* alleged is a *parochial modus*—50 G. 3. Scacc. *Baker v. Warner*. iii. 1387

23. A composition real cannot be proved by reputation and non-payment, unless the deed or evidence of one having once existed, be put in proof.—55 G. 3. Scacc. *Chatfield v. Fryer*. iii. 707

24. A defendant setting up a defence of a composition real, cannot afterwards rely on its being in fact a *modus*.

25. The objection to a composition real being presumed from usage, is founded on the maxim *nullum tempus occurrit ecclesie*.—57 G. 3. Scacc. *Ward v. Shepherd*. iii. 795

26. Where an occupier of lands is plaintiff in an issue directed by this court to try a *modus*, and proves on the trial that the defendant (the vicar) and his predecessors have not received tithe of hay within a certain township, either in kind or *sub modo*, within living memory; and that the vicar and his predecessors have been in possession of a piece of meadow within the same township, stated, in some of the terriers produced, to have been given in lieu of tithe hay; and no evidence is adduced to rebut such a case on the part of the defendant; if the jury find for the defendant under the direction of the judge, "that they must be satisfied from the evidence that the defendant and his predecessors have held the meadow in lieu of tithes from before the commencement of legal memory," there is no ground for a new trial.—57 G. 3. Scacc. *Adams v. Evans*. iii. 803

27. To establish a defence to a bill for tithes, of a composition real, evidence must be given that an agreement in writing, made between all proper parties, once existed: and it is not sufficient to prove that the payment commenced prior to 13 Eliz. and that it originated in an agreement which might have been by parol.—57 G. 3. Scacc. *Bennet v. Skeiffington, Bart.* iii. 827

28. A composition real, or grant of tithes, made by a vicar to the lord of a manor, in consideration of his finding a priest to officiate in a chapel, &c. previously to the 32 Hen. 8. c. 7. and supported by evidence of constant perception and compliance with the conditions on which it was made: held to be valid, though it was not proved to have been made with the

consent of the patron and ordinary.—59 G. 3. Scacc. *Ridley v. Storey*. iii. 918

29. A deed creating a composition real will not be presumed from payments for two hundred years in lieu of tithes. It is not necessary, that the deed creating a composition real should be proved by direct evidence; it may be established by presumptive evidence, but if there be no other evidence of the composition than mere payment, the legal inference and presumption is, that the composition originated without deed.—59 G. 3. Canc. *Estcourt v. Kingscote*. iii. 948

CONIES.—See RABBITS—DISCHARGE.

CONVOCAATION.—See CANONS.

COPYHOLD.—See TITHES, *how they pass*.

COPYHOLDERS.—See DISCHARGE.

1. Unity of possession by a religious person of a manor and parsonage is no discharge for the copyholders *without a prescription*; and a prohibition shall not be granted in such case where no prescription is alleged in the surmise to be discharged of tithes.—27 & 28 El. C. B. *Branche's case*. i. 89

2. Copyholders of inheritance of a spiritual person may prescribe under him in *non decimando*, for in consequence thereof it is to be presumed that the lord had the greater fines and rents. 42 Eliz. B. R. *Crouch v. Fryer*. i. 149

3. A copyholder may prescribe to be discharged of tithes by pleading that he was always tenant by copy of a spiritual corporation.—4 Jac. Scacc. *Skelton v. La. Airc*. i. 167

4. Copyholder of inheritance may prescribe, in the name of his lord, to be discharged of tithes.—5 Jac. B. R. *Anon.* i. 172

5. A custom within the manor of Godney within the parish of Meere, that for all copyhold tenements thereof, there had been paid, where the lord's rent reserved for such copyhold was above twelve-pence an acre, three half-pence an acre, &c. in lieu of all tithes for such copyhold lands and tenements, held good. 1 W. & M. Scacc. *Strode v. Bickham and Elliott*. i. 560

6. Tenants of customary freeholds may prescribe in *non decimando*, and Lord MANSFIELD said, this was rather stronger than the case of copyholders; for copyholders had acquired a permanent estate in their lands, before these persons had done so.—2 G. 3. B. R. *Stephenson v. Hill*. ii. 185;

CORN.—See TITHES, SMALL.

COVENANT.—See TITHES, *how recoverable at Common Law.*

1. If a parson grant to A. that he shall be discharged of tithes, and afterwards sue him for tithes, and A. bring his action of covenant in the temporal court, A. shall not have prohibition; for the action is, for that he has done contrary to his deed, which is a temporal thing, &c. for which A. shall recover damages.—8 Edw. 4. i. 44

2. A parson covenanted by deed that for a certain sum a parishioner should be discharged of all tithes, but afterwards sued in the spiritual court for tithes in kind: held that prohibition should not go, but an action on the covenant would lie against the parson in a temporal court.—16 Jac. B. R. *Fulcher v. Griffin.* i. 295
S. P. *Barnwell v. Pelsie.* i. 297

CREAM.—See MILK.

CURATE.

1. A curate libelled for tithes, as curate rightfully and lawfully admitted and *legitimè investitus*; the court held that *investitus* in the canon law means the same as *inductus*, which implies institution; and if the case be that he is a mere stipendiary curate, it is to be pleaded in the spiritual court, and if they refuse the plea, prohibition shall go.—1 Car. B. R. *Wrothmear v. Gill.* i. 338

2. Where tithes were devised to a curate, and to all that should serve the cure after him, the lord chancellor decreed that the heir of the devisee should be seised in trust for the curate for the time being.—32 Car. 2. Canc. *Perne v. Oldfield.* i. 256

3. Curate, though made perpetual, being in fact removeable (the appointment being in its nature revocable at law, without any cause assigned, and by the ecclesiastical law on cause shewn,) cannot sue for tithes.—3 Geo. 2. Scacc. *Price v. Pratt.* ii. 9

4. An Act for the better maintenance of curates within the church of England.—12 Ann. stat. 2. c. 12. iv. 205

5. Tithes may be holden by a curate.—32 Geo. 3. Scacc. *Tamberlain v. Humphreys.* iii. 1367

6. An Act for the further support and maintenance of curates within the church of England, and for making certain regulations respecting the appointment of such curates, and

the admission of persons to cures augmented by Queen Anne's bounty, with respect to the avoidance of other benefices.—36 Geo. 3. c. 83. iv. 230

7. An Act for the further support and maintenance of stipendiary curates.—53 Geo. 3. c. 149. iv. 262

8. An Act to consolidate and amend the laws relating to spiritual persons holding farms; and for enforcing the residence of spiritual persons on their benefices; and for the support and maintenance of stipendiary curates in England.—57 Geo. 3. c. 99. iv. 282

CUSTOM.—See DISCHARGE—MODUS—PRESCRIPTION—SETTING OUT TITHES.

1. One prescribed to pay three farthings for all willows cut down by him in such a parish; it was held bad, for if he cut down those of other men also, but the same sum would be paid for them all. But if he had prescribed for all willows cut down upon his own land, then it had been good.—29 El. B. R. *Anon.* i. 91

2. Where to have a prohibition it was suggested that every inhabitant in S. that had pastures in N. had paid tithes for them to the vicar of S. who had paid to the parson of N. two pence for every acre; it was held insufficient, for no modus would come in question, but who should have the tithes. The court also held the custom not reasonable.—30 El. B. R. *Gratefould v. Penn.* i. 93

3. Finding straw for the body of the church is no good modus in discharge of tithes of hay, unless it be shewn that the parson had a benefit from it; but if the straw had been given to the parson, and he bestowed it on the body of the church, or he had a seat in the body of the church, it had been otherwise.—34 El. B. R. *Scory v. Baber.* i. 106

4. Payment of tithes of one thing cannot be a satisfaction for the tithe in kind of another, but *Walmesley* said that money might be a satisfaction for many or all tithes.—38 El. C. B. *Grysmen v. Lewes.* i. 112

5. A prescription to be discharged of tithes of all dry cattle, and all other tithes of corn, hay, and cattle, in consideration of having paid the tenth cock of hay, the tenth sheaf of corn, and a modus for calves, is bad, for that which has been paid is but the tithes in kind, and therefore cannot be in satisfaction of any thing but themselves.—42 El. C. B. *Ingoldsby v. Johnson.* i. 152

6. An established custom cannot be affected by a modern temporary interruption.—43 & 44 El. B. R. *Nowell v. Hicks.* iii. 1201

7. There is a difference between a suggestion to have a prohibition, and a prescription comprised in it, and a prescription made in defence, or by way of plea in any original action; for in

the latter case of a joint prescription made for two things, a failure in one destroys the whole, because that is by way of title; but otherwise here, because this prohibition is only to give jurisdiction to the King's court.—2 Jac. B. R. *Anon.* i. 159

8. Upon suggestion of a special custom, as to the mode of paying tithes, prohibition shall be granted.—12 Jac. B. R. *Hicks v. Froud.* i. 234

9. A custom that the parson of S. S. should pay 4s. to the parson, and 8s. to the vicar of N. S. and so the inhabitants of S. S. having lands in N. S. paying tithes to their parson, should be discharged of tithes of cattle depasturing upon a waste in N. S. held good. S. C.

10. To demur to prescriptions at first is dangerous; it is best to join issue upon the custom, and try the facts, and afterwards, if necessary, to demur in law. (By Coke.)—13 Jac. B. R. *Mascall v. Price.* i. 225

11. Where the issue in the spiritual court is upon a custom which gives a recompense for the tithes in kind, a prohibition ought to be granted; but otherwise where the custom gives no recompense to the parson.—15 Jac. B. R. *Gose v. Baines.* i. 261

Portinger v. Johnson. S. P. *ib.*

12. In a libel for tithes it was alleged that the custom was (*inter alia*) that the parishioner should preserve the parson's tithes until he should carry them away; prohibition was granted, for he is not bound to guard the tithes, and if the parson do not carry them away in convenient time, an action on the case lies.—15 Jac. C. B. *Dr. Brigman's case.* i. 289

13. A custom was alleged to pay the tenth part of the rent reserved upon leases for tithes: the court took time to consider the custom.—16 Jac. C. B. *Napper's case.* i. 296

14. A custom admitted in the spiritual court may be tried there; but if it be denied, prohibition shall go.—1 Car. B. R. *Anon.* i. 338

15. Tithe of fish is due merely by custom, which if disputed, shall be decided by the common law courts: for though customary payments for tithes due *de jure*, may be sued for in the spiritual court, yet if the tithes be not due *de jure*, but by custom only, as of fish, rabbits, ore, limekilns, &c. the custom shall be tried at common law, after which the spiritual court may proceed upon it.—3 Car. C. B. *Anon.* i. 357

16. If there be a custom to pay for three calves 1d. and if seven, one calf, the parson shall not have a calf where there were three in one year and four in another, he having neglected to take tithe of the first three.—3 Car. B. R. *Anon.* i. 360

17. A bill was filed to establish certain customs of tithing within a particular parish, the plaintiff alleging, that there were such customs, and setting them forth at large in his

bill. The defendant, by his answer, denied the customs; and alleged, that it was not proper for a court of equity to determine whether there were any such customs or not; that the bill was in nature of a prohibition at common law; and in case where such a prohibition had never been granted, or the custom tried; and therefore the bill was dismissed.—5 Car. Canc. *Anon.* i. 370

18. It is not a good modus, that in consideration that the parishioner having barley, the greater part whereof he has cut down, and tied into sheaves, and set in cocks, of which the parson had the tenth cock, that he has used to leave a small parcel of the barley to stand, to the intent to cut it down after for bands for the rakings involuntarily scattered, and to be discharged of this small parcel of barley when he cuts it.—8 Car. B. R. *Saunders v. Paramour.* 1 Ro. Abr. 650.

19. *Quere*, whether a custom that the inhabitants of the precinct of a chapel should be freed from the payment of tithes in consideration of finding a rope for a bell, and repairing part of the mother-church, be good.—17 Car. B. R. *Anon.* i. 401

20. It was said by BERKELEY, J. that it is a rule, where the parishioner does any thing which he is not compelled by the law to do, which comes to the benefit of the parson, there if he demand tithes of the thing in lieu whereof this is done, a prohibition shall be granted.—15 Car. B. R. *Anon.* i. 399

21. A custom to pay less than the tenth for things of which tithes are due of *common right*, is not good without other matter.—18 Car. 2. B. R. *Penrose v. Shepherd.* i. 448

22. TWISDEN said, that where the libel is grounded on a custom, whereof they have original consueance, there no prohibition will lie on denial of the custom; but *contra*, where the thing lies there only by virtue of the custom, and not otherwise, as in libel for tithes of conies, does, or fish; which was not denied by any.—21 Car. 2. B. R. *Philips v. Clever.* i. 479

23. A custom to pay the thirtieth shock of corn grown on the demesne lands of a manor in satisfaction of all tithes, held good. (The manor had been granted by H. 8. and therefore the lands had probably belonged to a spiritual body.)—2 W. & M. Scacc. *Harker v. Clarke.* i. 563

24. A man cannot prescribe to pay less of the same thing, but ought to prescribe to pay some other thing in lieu of it, or to pay it in some other manner than the law prescribes, so that the parson has a benefit by it.—10 W. 3. B. R. *Hill v. Vaus.* i. 629

25. A custom that all freeholders shall pay five pence, and all leaseholders nine pence, an acre quarterly in lieu of tithes, and that those

who do not hold more than one acre, shall pay tithes in kind, is unreasonable and void in law.

—1 Geo. Scacc. *Shapter v. Michell*. i. 713

26. Tithes decreed where the defendants alleged a custom that the corn tithes were to be lodged by the farmers in their barns, and there threshed, &c. and the straw left to their use.—

2 Geo. Scacc. *Johnson v. Lewson*. i. 718

27. A custom that the occupiers of ancient tenements within a parish should each carry a cart-load of peat to the parsonage house, in discharge of the tithes of hemp, flax, and hay, arising on such tenements is void, for a cart-load is too uncertain, and no right of turbary alleged in the parsonage house or ancient tenements.—9 Geo. Scacc. *Tully v. Kilner*. i. 787

28. A custom that the parson had enjoyed a meadow and several beast grasses in the parish in lieu of tithes, held to be void for the uncertainty.—10 Geo. Scacc. *Birch v. Stone*.

i. 797

29. A custom alleged in a suit, in prohibition, differs from other allegations of customs, for in those the custom must be proved exactly as it is laid, otherwise the party fails; but in prohibition the defendant is considered as an actor, suing for a consultation, and therefore, if upon the whole it appear to the court, that there is a modus, they cannot grant a consultation.—10 Geo. 2. B. R. *Sharp v. Lowther*.

ii. 62

30. A custom to tithe barley and oats by making them into small cocks, called wads, from the swathe, without raking, and to set out every tenth wad, is bad.—38 Geo. 3. Scacc. *Howard v. Borringdon*.

iii. 1377

31. It is incorrect to plead, that by a custom used and approved in P. and 19 other parishes, no tithe of a particular kind was due or payable to the rector of P.—1 & 2 Geo. 4. Canc. *Page v. Wilson*.

iii. 1029

DEAN AND CHAPTER.

1. A dean and chapter are a body spiritual, who may prescribe in *non decimando* for them and their tenants.—21 Jac. C. B. *Brig's case*.

i. 326

2. A dean and chapter is a spiritual and not a lay body.—11 Geo. Scacc. *Fisher and others, lessees of the Dean and Chapter of Christ Church*.

i. 805

DEBT, ACTION OF, ON 2 E. 6.

See AGREEMENT.

1. In an action of debt on 2 E. 5. the declaration stated, the stat. made 2d Nov. 2 & 3 E. 6. and judgment was arrested after verdict, for a day cannot be in two years of a King's reign.—34 El. Scacc. *Langley v. Haynes*.

i. 104

2. *Baron and feme* may join in an action on 2 E. 6. if the husband be seised of the rectory in right of his wife, or in jointure with her.—34 El. B. R. *Wentworth v. Crispe*.

i. 105

3. A husband was possessed of a lease for years of tithes, in right of his wife; held, that they might well join in an action on 2 E. 6. for the treble value; that such action should be brought in the temporal courts; that the particular kind of corn sown need not be expressed; that the treble value goes to the owner of the tithes, and not to the queen.—40 El. B. R. *Bedell v. Sherman*.

i. 140

4. An action of debt *qui tam pro rege*, &c. does not lie, (for the crown shall rather have a fine for the contempt by information or indictment,) but the party grieved may have it, and treble damages, and not guilty is a good plea.—40 El. B. R. *Johns v. Carne*.

i. 140

5. *Not guilty* or *nil debet* are good pleas to an action on 2 E. 6. for it is not for a non-feasance, but a malfeasance.—42 El. B. R. *Wortley v. Herpingham*.

i. 151

6. In debt on 2 E. 6. the jury must give treble damages, but no costs or other damages.

7. A farmer of tithes may sue by the equity of the statute, because he has a right to the tithes, though the statute do not give the action to the farmer. Two farmers may join in an action, and an agreement with one shall bind his companion.—44 El. B. R. *Day v. Peckwell*.

i. 154

8. One action may be brought upon 2 E. 6. upon several titles, as parson and vicar, if those titles be joined in the plaintiff; and the tithes are recovered in damages, and cannot be demanded again by any suit, after a recovery in this action.—3 Jac. B. R. *Champernon v. Hill*.

i. 161

9. Debt by two on 2 E. 6. who recover treble value and damages and costs, they release the damages and costs, being in doubt whether they ought to have them, and take judgment for the treble value: error was brought in the Exchequer Chamber, for that it was shewn by plaintiffs for title, that the Queen let the rectory to A. for life, who let it to the plaintiff for years, but they did not say by letters patent produced here in court; but held, that as plaintiffs had but parcel of an estate, viz. a lease derived out of a lease for life, and because the letters patent did not belong to them, and for that the action was to punish a tort, and not to demand the tithes, and the title shewn in the declaration was but a conveyance to the action, the declaration was good without shewing the letters patent, but otherwise if it had been pleaded in bar.

10. A farmer may sue for the treble value on 2 E. 6. in the temporal courts.

11. In an action brought by two farmers, it is sufficient to say, that the defendant did not

agree with them, for if he agreed with one of them, he ought to shew it.—3 Jac. Capc. Scacc. *Dagg and Kent v. Penkeon.* i. 162

12. Where it was moved in arrest of judgment that the plaintiff had declared on the statute made 4 Nov. 2 E. 6. and that there was no such statute, for the parliament commenced 1 E. 6. and continued by prorogation till 4 Nov. 2 E. 6. the court held the declaration good, as all the precedents were so.—6 Jac. B. R. *Oliver v. Collins.* i. 172

13. A husband, proprietor of tithes in right of his wife, sued alone for the treble value against a parishioner who set forth his tithes, but afterwards took them away; held that the action lay for the fraud, but that the wife ought to have been joined.—8 Jac. C. B. *Ford v. Pannoy.* i. 198

14. In an action on 2 E. 6. it is sufficient for the plaintiff to state himself in the declaration to be proprietor without other title; the principal matter is the damage for not setting out tithes, which alone is traversable.—9 Jac. C. B. *Willott v. Spencer.* i. 200

12 Jac. B. R. *Babington v. Matthews, S. P.* i. 224

15. No action lies upon 2 E. 6. for not setting out tithes of lamb and wool, for they are not predial; and no action lies upon this statute for small tithes.—10 Jac. C. B. *Anon.* i. 203

16. Objections to an action on 2 E. 6. 1st. That the offence was alleged by way of recital. 2. That the word "owner" was omitted. 3d. That it was not shewn how proprietor. 4th. That it was not shewn by whom the corn was sown. 5th. That the time of the asportation of the corn was not stated, overruled. 10 Jac. B. R. *Moyle v. Euer.* i. 204

17. In an action on 2 E. 6. a variance between a lease stated in the declaration, and a lease proved, is immaterial, as it is but an inducement to the action which is founded on the wrong.—11 Jac. B. R. *Wheeler v. Haydon.* i. 219

18. The word "forfeiture" in the statute 2 E. 6. does not give the treble value to the King, but to the parson himself.—11 Jac. Dean and Chapter of *Windsor v. Webb.* i. 220

19. The stat. 2 E. 6. does not give any damages for mere subtraction of tithes; but if the tithe be first set out, and then subtracted, then because the parson had once an interest, he shall recover treble damages. If the jury give £20 damages, then the court shall treble them and make them £60.—11 Jac. C. B. *Baldwyn v. Gyrrie.* i. 220

20. In *debt* on 2 E. 6. the number of loads of corn need not be expressed in certain.—12 Jac. C. B. *Anon.* i. 232

21. *Dodderidge* doubted whether non-payment for forty years before 2 E. 6. was not a

bar to the right of action under that statute, for as by the canon law twenty years possession makes a prescription for the church and forty years against it, he thought that non-payment for forty years prevented any remedy under the act to enforce a payment, for there being no remedy before this act at common law, a layman should only sue as the act enabled him.—15 Jac. B. R. *Dobitoff v. Curteene.* i. 262

22. A portionist may declare generally on 2 E. 6. without setting forth his title, for the action is to punish a tort, and is not founded upon the title, so that the right may come in question; and it is not necessary to set out the quantity of every grain in *specie*.—15 Jac. B. R. *Saunders v. Sandford.* i. 270

23. *Nil debet* a good plea in debt upon 2 Edw. 6.—15 Jac. C. B. *Bawtry v. Isted.* i. 270.

24. *Quere* whether an action will lie on 2 E. 6. for not setting out a predial small tithe. 3 Jac. Scacc. *Norton v. Clarke.* iii. 1211

25. Though the sum due for treble value be not exactly set out in the declaration it is immaterial, for the plaintiff shall recover according to the verdict, not the declaration.—16 Jac. B. R. *Pemberton v. Shelton.* i. 297

26. A declaration on 2 E. 6. *tam pro rege, &c.* was held good.—4 Car. *Luvered v. Owen.* i. 368

27. If tithes be leased by deed, *debt* lies for the rent, but if without deed, *assumpsit*.—6 Car. B. R. *Walrish v. Cropton.* i. 373

28. Where, on 2 E. 6. the declaration stated that the defendants were occupiers of certain lands, it shall be intended they were joint occupiers, and not occupiers in common, unless it be shewn on the part of the defendants.

29. No time of taking away was mentioned, which ought to be, for it is the sole cause of action, and not the mere severance itself, as appears from the words of the statute: "and that no person shall, &c." And therefore if the occupier do not carry away the tithes, but suffers them to rot upon the land, the farmer shall have no remedy by this action, but ought to sue in the spiritual court; which was granted; but in this case the time was sufficiently shewn, for the time of cutting them was shewn; and by a conjunction the cutting and carrying united, so that the time of carrying was well shewn, and needed no "then and there."—7 Car. B. R. *Cook v. Smyth and another.* i. 374

30. An action was brought against one of two lessees (on 2 E. 6.) who did not set out their tithes; held it did not lie; but being found that one only occupied, therefore the action well laid. Where in a like action against two tenants in common, one set out his tithe and the other carried it away, held that the action

was only against him who took it away.—8 Car. C. B. *Cole v. Wilkes.* i. 377

31. A plaintiff in an action on 2 E. 6. need not state his interest : whoever takes the tithe is a trespasser, be he disseisor or servant. So if he cut the tithes, and another carries them away, action lies against either.—15 Car. B. R. *Anon.* i. 398

32. In debt on 2 E. 6. defendant pleaded a discharge under 31 H. 8. Issue was joined on the discharge, and found against the defendant : held that the value should be taken as confessed ; the issue being on a collateral point, and the value not taken by protestation, but neither damages nor costs. 23 Car. B. R. *Bowles v. Broadhead.* i. 402

33. In an action on 2 E. 6. it was held sufficient in the declaration to say, that on such a day he was possessed, and from the same day occupied, and it shall be intended of a rightful estate ; and when it is said that he is rector of the church, he shall be intended proprietor of the tithes till the contrary is shewn. 24 Car. B. R. *Hobart v. Boraston.* i. 404

34. In debt on 2 E. 6. it was held that two churches united by 37 H. 8. c. 21. are both of spiritual promotion.—1649. B. S. *Gibbon v. Kent.* i. 404

35. Upon a motion in arrest of judgment, on the ground that it did not appear by the declaration on 2 E. 6. in what parish the lands laid. *Rolle, C. J.* said, that it shall be intended *after verdict*, that the tithes belonged to the plaintiff as parson of the parish, and were within it, but the declaration would have been bad on demurrer.—1650. B. S. *Cane v. Pell.* i. 406

36. In an action of debt on 2 E. 6. it was moved in arrest of judgment, that damages were given for 71 acres, whereas only 70 acres were declared for ; but the court held it to be but a miscounting of the jury, which would not vitiate.—1651. B. S. *Cressit v. Burges.* i. 409

37. In debt upon 2 E. 6. a general allegation in the declaration, without shewing a title, is sufficient, although a rector claim tithes out of his own parish. It was not stated that the defendant was *subditus domini regis* ; but the exception on this account was not allowed, for the statement that he was *occupator terræ*, implies it.—12 Car. 2. Scacc. *Phillips v. Kettle.* i. 432

38. Although a lease for tithes cannot be good without deed, so as to pass the right, yet a parol agreement by way of retainer, is a good bar to an action on 2 E. 6.—13 Car. 2. B. R. *Bernard v. Evans.* i. 434

39. Debt on 2 E. 6. for not setting out tithes, lies by executors, but not against them. 14 Car. 2. B. R. *Holl v. Bradford.* i. 437

40. WINDHAM and KEYLINGE were of opinion that an action on 2 E. 6. for not setting out tithes, did not lie against executors, it being a personal tort of the testator.—16 Car. 2. B. R. *Weeks v. Trussell.* i. 440

41. In an action on 2 E. 6. the plaintiff need not aver that the defendant had not compounded with the farmer, parson, &c. for the defendant must shew the composition, and it is a sufficient contempt that he has not set out his tithes.—18 Car. 2. B. R. *Owen v. Evans.* i. 449

42. In debt for subtracting the tithes of seventy loads of peas and beans, without distinguishing how many of each, the court refused to stay judgment.—20 Car. 2. B. R. *Townsend v. Clerke.* i. 458

43. Debt on 2 E. 6. for not setting out tithes lies by executors, but not against them ; and by Keylinge this is a duty trebled by the statute and not a bare penalty.—21 Car. 2. B. R. *Moreton v. Hopkins.* i. 480

44. In debt upon 2 E. 6. for not setting out tithes in the parishes of D. and S. the declaration not shewing how much in D. and how much in S. is good, for the action is but in nature of trespass, and to punish the tort in not performing the statute.—23 Car. 2. B. R. *Pellow v. Kingsford.* i. 494

45. Setting out tithes by the owner who takes them away is not good within 2 E. 6. otherwise taken away by a stranger. 34 Car. 2. B. R. *Anon.* i. 539

46. If the executor of a parson bring a bill for tithes, he need not offer to accept the single value, he not being entitled by stat. E. 6. to the treble value. 34 Car. 2. Scacc. *Anon.* i. 540

47. An agreement by parol to retain tithes is good and within the stat. 2 E. 6. though for more than one year.—4 W. & M. Scacc. *Grove's case.* i. 575

48. The want of an averment in the declaration, that the defendant had not agreed for his tithes, though bad upon demurrer, is cured by a verdict ; for if any agreement were proved at the trial the plaintiff could not recover. 6 W. & M. B. R. *Alston v. Bascough.* i. 584

49. After great debate, the court of Common Pleas unanimously resolved that the action for not setting out tithes on 2 E. 6. was founded on a tort, and not upon a contract, for not guilty is a good plea to it, and therefore one may be found guilty and the other acquitted, as in other actions upon torts.—7 W. 3. C. B. *Bastard v. Hancock.* i. 614

50. In an action of debt, on the statute 2 & 3 Edw. 6. for not setting out tithes, the declaration only stating that tithes had been paid for 40 years before the making of that act, but not averring that tithes were payable,

and of right ought to be paid; and there being no evidence on the trial that tithes had ever been paid; the court held the want of such averment material; and, a verdict having been found for the plaintiff, granted a new trial, and ordered the declaration to be amended.—9 G. 3. C. B. *Lord Mansfield v. Clarke*. . . ii. 288

51. Held, in an action on the statute 2 & 3 Edw. 6. for not setting out tithes, that the same evidence was admissible in this, though an action on a penal statute, as to proof of title, as if it had been in ejectment; but as tithes properly lay in grant, 20 or 30 years possession, unaccompanied by deeds, would be very weak evidence of title.

52. Held also, that in an action on this statute, it was necessary to prove perception of tithes in kind, within 40 years before action brought, analogous to the reasoning of the legislature at the time of making the act, which mentions, that to entitle the plaintiff to the action, the tithe must have been paid within 40 years before the making of that act.—9 G. 3. B. R. *Kinaston v. Clarke*. . . ii. 234

53. In an action of debt, on the statute, for not setting out tithes, the evidence preponderated on the part of the plaintiff, but the jury returned a verdict for the defendant. On an application for a new trial; it was objected, that this being a penal action, the verdict ought not to be disturbed, merely as being contrary to evidence, unless perjury appeared, or it was shewn that the jury had been tampered with. But the court overruled the objection, and granted a new trial.

54. An action on the statute, for not setting out tithes, is almost the only action by which the right can be tried by the common law, and is the most beneficial way for the defendant to try his title.

55. The jury never give the damages in such an action, for they are not directed so to do. 13 G. 3. B. R. *Holloway v. Hewitt*. . . ii. 283

56. In an action of debt for the penalty of the statute 2 & 3 E. 6. c. 13. for not setting out tithes, with a count in the declaration for the single value; after a demurrer to the declaration, the parties submit to arbitration, and the arbitrator awards the single value to be less than 20 nobles (6l. 13s. 4d.) The plaintiff is not intitled to costs on the counts for the penalty, under the stat. 8 & 9 W. 3. c. 11. s. 3. the value not having been found by a jury; but the Court will allow him to have the costs taxed, on the count for the single value.—29 G. 3. B. R. *Barnard v. Moss*. . . ii. 357

57. In debt on 2 & 3 Edw. 6. c. 13. for not setting out tithes, where the declaration stated that they were, within forty years next before the statute, of right yielded and payable and yielded and paid, evidence that the land had

always been remembered to be in pasture, and had never within living memory paid any tithe, is not sufficient to defeat the action.

58. *BULLER, J.* said, if indeed it had appeared that this land had been ploughed before, and yet no tithe had been exacted for it, that might have afforded some ground for such a presumption.—33 G. 3. B. R. *Mitchell v. Walker*. . . ii. 372

59. If A. execute a lease of tithes to B. on a day subsequent to their severance, but previous to their being carried away by the landholder, B. cannot maintain an action on 2 & 3 E. 6. c. 13. as the right to the tithes vested in A. immediately on severance.

60. Evidence that the parishioners have treated with the proprietor for a composition, is not alone sufficient to establish his possession of the tithes in an action on the statute.

61. *Quære*, whether if one only of two joint tenants execute an assignment of a lease of tithes, the person claiming under that lease can support an action for not setting them out. 39 G. 3. C. B. *Wyburn v. Tuck*. . . ii. 480

62. In debt for subtraction of tithes of any particular article, the plaintiff, though he allege the tithe of that article to have been "granted, yielded, and paid, and of right due and payable," on the land in question forty years next before the making of the stat. of Ed. 6. need not prove that the particular article was cultivated there at that time; but it lies on the defendant to prove that it was not. 46 G. 3. C. B. *Halkiwell v. Trappes*. . . ii. 552

63. In an action on the statute 2 & 3 Ed. 6. c. 13. for the treble value of tithe-corn, omitted to be set out, it is not enough for the defendant to shew the existence, in fact, of a custom in the parish to set out the 11th instead of the 10th mow, for the validity as well as the existence of such a custom is properly triable in this form of action, though penal in its nature: being given to the party grieved, and his only remedy at common law for subtraction of the tithe due to him.—47 G. 3. B. R. *Phillips v. Davies*. . . ii. 554

64. In debt upon the stat. 2 & 3 Ed. 6. c. 13. for not setting out a tenth as the tithe of hay, the plaintiff is entitled to recover upon his common law right, unless there be evidence of some certain good *modus*, or customary payment in lieu of the common law tithe; and though the plaintiff gave in evidence a terrier of 1696, stating a custom to take the eleventh cock of hay in a certain advanced state of preparation; and though his own and the defendant's witnesses stated other varying modes of payment; yet the terrier not being conclusive, and the jury not finding the eleventh cock of hay renderable or other specific customary mode of tithing, the plaintiff is entitled

to recover.—53 G. 3. B. R. *Bindall v. Maudslay*. ii. 651

66. No action shall be brought for the recovery of any penalty for the not setting out tithes, unless such action shall be brought within six years.—53 Geo. 3. s. 127. iv. 258

67. The statute 2 & 3 Ed. 6. c. 13. is a remedial act, and in an action thereon the court will grant a new trial for a mistake of the jury.—55 Geo. 3. C. B. *Lord Selous v. Powell*. iii. 714

68. Where in an action on 2 & 3 Edw. 6. in which the first count was for the treble value of the tithes, and the rest for the single value, a verdict was entered for the plaintiff, on the whole declaration, by consent, subject to the award of an arbitrator, who directed the *postes* to be endorsed "30s. treble value of the tithes; damages 1s.; costs 40s.; this was holden to be within the 8th & 9th W. 3., and that the plaintiff was entitled to his costs of suit.—57 Geo. 3. Scacc. *Pedley v. Frampton*. iii. 794

69. After payment of money into court by a defendant, in an action brought against him on the 2d & 3d Edw. 6. by a farmer of tithes, he cannot object to the plaintiff's title to the tithes; because he has admitted the plaintiff's right generally, and has reduced the cause to a mere question of the amount of the damages.—57 Geo. 3. Scacc. *Broadhurst v. Baldwin*. iii. 806

70. *Scoble*.—A lease and farmer of tithes declaring as owner and proprietor, is bad.—58 Geo. 3. Scacc. *Stevens v. Aldridge*. iii. 879

71. A layman, lessee of the tithes of certain closes, which the rector lets by auction in separate lots every year, shews a sufficient title to enable him to recover on the stat. 2 & 3 Edw. 6. for not setting out the tithes, if he prove that payment for tithes was made to him, in a former year. *Per Dallas*, C. J. at *Nisi Prius*.—59 Geo. 3. N. P. *Ganson v. Wells*. iii. 923

72. Where the jury in an action of debt on 2 & 3 Edw. 6. c. 13. which gives treble value for not setting out tithes, found damages which amounted only to the single value; held that the court could not amend the *postes*, by entering the verdict for the treble value.—1820. *Sandford v. Porter*. iii. 1391*

73. Where a declaration in debt for tithes under 2 & 3 E. 6. c. 13. s. 1. omitting to state that the tithes had been yielded and paid, and of right ought to have been paid within 40 years next before the passing of the act: Held, that it was defective, even after verdict, and the judgment was arrested.—2 Geo. 4. B. R. *Butt v. Howard*. iii. 1061

74. Where the plaintiff, in a special jury cause for not setting out tithes, was under

a peremptory undertaking to try at the next assizes, the absence of eleven special jurors was holden to be a sufficient reason for his declining to proceed with the trial, although a tales had been prayed, and part of the talesmen sworn; and the court discharged a rule for judgment as in case of a nonsuit, on the plaintiffs giving a fresh peremptory undertaking to try at the ensuing assizes.—3 Geo. 4. C. B. *Master v. Milner*. iii. 1089

75. The plaintiff has his option to issue a writ of inquiry or not, in an action of debt, founded on the statute 2 & 3 Ed. 6. c. 13. brought to recover the treble value of tithes; and where, in such an action, the declaration contained a count for treble value, and other counts for tithes bargained and sold, and on an account stated; and the defendant suffered judgment by default, and the jury on a writ of inquiry assessed the plaintiff's damages at 17l. 4s. 9d. on the first count, for the treble value, and 9l. for the single value on the other counts, but omitted to find costs, the court ordered the return of the inquisition to be amended, by the insertion of nominal damages as to the last counts, on which costs *de incremento* might be added: and it seems, that the statute 8 & 9 W. 3. c. 11. s. 3. which gives the plaintiff his costs in all actions of debt for not setting forth tithes, where the damage found by the jury should not exceed twenty nobles, is confined to cases where a plaintiff obtains judgment after plea pleaded, or demurrer joined, and does not apply to a case where a defendant suffers judgment by default.—3 & 4 Geo. 4. C. B. *Bale v. Hedgetts*. iii. 1089

76. In an action by a vicar, for not setting out prædial tithes, proof of a single payment to him, or any of his predecessors, of that species of tithe, is evidence to go to the jury, that the vicars of that place are endowed with that species of tithe.—5 Geo. 4. N. P. *Apperley v. Gill*. iii. 1131

DECOY.—See DISCHARGE, No. 57.

1. Tithes are not payable for wild ducks, or for ducks or other fowl taken in a decoy, nor for the eggs of tame ducks kept for the service of a decoy.—33 Car. 2. Scacc. *Canell v. Ward*. i. 530

2. A claim of tithe of wild fowl taken in a decoy abandoned at the hearing.—27 Geo. 3. Scacc. *Cowley v. Keys*. iii. 1351

3. A decoy in the hands of the owner, who remunerates the person employed by him to manage it, by allowing him half the profits, is not liable to tithes. Ordered, therefore, as to him, that he go without day.—60 Geo. 3. Scacc. *Att.-Gen v. Lord Eardley*. iii. 986

DÉCREE.—See TITHES, Chancery.

DEER.—See DISCHARGE.

1. Deer in a park are not titheable without a custom.—10 Ann. Scacc. & Dom. Proc. *Nicholas v. Elliott*. i. 698

DEMESNES.—See ENDOWMENT—MANOR.

DIOCESE.—See SPIRITUAL COURT.

DISCHARGE.—See AGREEMENT—BULLS—CISTERCIANS—CUSTOM—MILLS—TARES—UNITY.

1. By CHURCH, a man may not prescribe in *non decimando*, but in *modo decimandi* he may well prescribe. The serjeants said that the spiritual court would not accept any plea in discharge of tithes.—8 Edw. 4. Scacc. i. 44

2. No tithe shall be paid for any manors, lands, tenements, or hereditaments, which by the laws or statutes of this realm are discharged, or not chargeable with the payment of tithes. 32 Hen. 8. c. 7. § 5. iv. 51

3. Such lands as before the dissolution were discharged of tithes shall so continue.—31 H. 8. c. 13. § 21. iv. 48

4. No person shall be sued, or otherwise compelled to yield, give or pay any manner of tithes, for any manors, lands, tenements or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition real.—2 & 3 Edw. 6. c. 13. s. 4. iv. 87

5. Where a parson sued for tithes of hay and corn out of the demesnes of a manor which had formerly belonged to the abbot of Peterborough, whose farmers by lease or at will being lay persons, for time immemorial before and at the dissolution of the abbey (31 H. 8.) had paid no such tithes, but only of wool, and lambs, &c. it was held that a prohibition upon the 31 H. 8. c. 13. s. 21. by virtue of the word discharged would lie.—18 El. The parson of *Peykirke's case*. i. 66

6. Sequestration to set out tithes, where the dispute is to whom they belong, may be; but where lands are claimed to be discharged, such a thing was never seen, and if the tenant were to agree thereto, he would admit the lands to be titheable.—24 El. Scacc. *Mayne v. Becke*. i. 82

7. Unity of possession by a religious person of a manor and parsonage is no discharge for the copyholders without a prescription; and a prohibition shall not be granted in such case where no prescription is alleged in the surmise to be discharged of tithes.

8. If an abbot or prior were seised of land discharged of tithes, the new farmer of that land shall be admitted to prescribe in a *non decimando* by the stat. 2 E. 6. which wills that no one shall pay tithes, otherwise than they were paid forty years before; but in no other case shall a man prescribe in *non decimando*, but only in *modo decimandi*.—27 & 28 El. C. B. *Branche's case*. i. 89

9. A suggestion of an immemorial payment of money to a parish clerk, in discharge of tithes, is not good. But the court thought that if it had been specially surmised that the parson was bound to find such a clerk, and such sum had been used to be paid to him in discharge of the parson, it might have been good by way of composition.—30 El. B. R. *Savel v. Wood*. i. 93

10. It was said by BURLINGTON, lord treasurer, that if the composition or custom was that the abbot and his successors should be discharged, without extending to farmers or lessees, if the abbot made a lease, and the lessee paid tithes as he ought; and after the reversion cometh to the king, the lessee should pay tithes during his lease, but after the lease determined, the king and his patentee should not pay, but should be discharged by the said statute.—30 El. Scacc. *Prowse's case*. i. 95

11. The Cistercians were privileged to pay no tithes for lands *quas propriis manibus*, &c. by the 31 H. 8. the queen and her farmers should be discharged, as the spiritual persons were; but as the queen cannot *excolere*, ergo her farmers shall be discharged; and so long as the queen has the freehold, her farmers for years, or at will, shall be discharged. But if the queen sell the land or the reversion to another, then the farmers shall pay tithes.—32 El. Scacc. *Countess of Lennor's case*. i. 99

12. Lands held by a bishop and his predecessors, by prescription, discharged of tithes, though severed from the bishopric for a time, shall, upon a regrant to the bishop and his successors, be again discharged.—32 El. B. R. *Wickham, Bp. of Lincoln v. Cowper*. i. 100

13. Issue was joined to try whether certain lands had been held by a prior and his predecessors time out of mind, before and at the dissolution discharged of tithes; it appeared by the evidence of old persons who were produced, and remembered the time of the monasteries, that no tithes were paid for the lands then or from thence; but no cause of discharge was

shewn, whether by unity, real composition, or any other way, which was excepted to; it was held, that a spiritual man might prescribe in *non decimando*, and that it was well enough, although the special matter of discharge did not appear, for the court ought to take it that it was by lawful means, for the stat. 31 H. 8. is, that the King shall hold discharged as the abbot, &c. and if he held it discharged, *non refert* by what means, for it shall be intended a lawful discharge of tithes *tempore dissolutionis*.—33 El. B. R. *Nash v. Mollins*. i. 100

14. It is not a good modus, that he ought to be discharged of tithes, in consideration that he has used, time out of memory, &c. to employ the whole profits of the land in the reparation of the body of the church, and to find all necessaries for the church, for this is not a recompense to the person; but it is a good modus to be discharged because he has used, &c. to employ the profits for the reparation of the chancel, for the parson has a benefit by this.—37 El. C. B. *Longley v. Meredize*. 1 Ro. Abr. 649

15. If land had come to the King by the stat. 31 H. 8. then by force of the branch of discharge of the payment of tithes, a general allegation that the prior, &c. held the land at the time of the dissolution of the said priory discharged of the payment of tithes, without shewing how, had been sufficient, and so is the common use.—38 El. B. R. *Green v. Balser*, or the Archbishop of Canterbury's case. i. 113

16. Spiritual persons might and may prescribe to hold their lands for themselves, their tenants and farmers, for years or at will, discharged of tithes.—38 El. B. R. *Wright v. Wright*, or the Bishop of Winchester's case. i. 119

17. If a discharge be pleaded generally by prescription, and not by reason of unity; then the prescription ought to be answered, and not the unity.—40 El. B. R. *Button v. Long*. i. 139

18. A custom that all the parsons of a parish had held and enjoyed certain land parcel of a manor, in recompense of all tithe wood within the parish was held good; for it may be, that at the beginning, all the land within the parish was parcel of the manor, and that then this allowance of the profits of this land was allotted in discharge of tithes of all the wood within the same parish; and, that at the first, it was all the land of the allotter.—40 El. B. R. *Samerton v. Cotton*. i. 141

19. Copyholders of inheritance of a spiritual person may prescribe under him in *non decimando*, for in consequence thereof it is to be presumed that the lord had the greater fines and rents.—42 El. B. R. *Pigot v. Simpson*. i. 148

20. Libel for tithes of rough hay growing in the marshes and fenny lands of Mildenhall; for prohibition, it was alleged, that because the parishioners had not sufficient grass within the parish to sustain their beasts in winter they used to gather this hay called fenny fodder, for the sustenance of their beasts, for the better increase of their husbandry; and for this cause had always been freed from the payment of tithes for it; upon demurrer it was held insufficient, for so they might prescribe for corn spent in their family, or for corn given for provender to their cattle.—2 Jac. B. R. *Webb v. Warner*. i. 158

21. If a man prescribe to be discharged of payment of tithes by reason of payment of another kind of tithe, it is not good.—4 Jac. Scacc. *Skelton v. Lady Airie*. i. 167

22. If a bishop hold land discharged of tithes, and sell it, the purchaser shall be discharged; and so if the king grant forest lands which he had discharged; and it is a general rule that he who may have tithes may be discharged of them.—6 Jac. Anon. i. 174

23. One may be discharged from the payment of tithes five manners of ways: 1. By the law of the realm, that is, the common law; as tithes shall not be paid of coals, quarries, bricks, tiles, &c. F. N. B. 53. and Reg. 54. nor of the after-pasture of a meadow, &c. nor of rakings, nor of wood to make pales, or mounds, or hedges, &c. 2. By the statutes of the realm, as by 31 H. 8. c. 13, the stat. 45 Edw. 3. &c. 3. By privilege, as those of St. John of Jerusalem, in England, the Cisterians, Templars, &c. as appears by 10 H. 7. Dy. 277. 4. By prescription, as by *modus decimandi*, or an annual recompense in satisfaction of them. 5. By real composition, as where two acres of meadow have been given in lieu of tithes of hay of certain land, which is good.—6 Jac. C. B. The case of *Modus Decimandi*. i. 177

24. A custom was alleged in a town, that every inhabitant who maintained a family and dairy for manuring his land and maintenance of his family, had used, from time, whereof, &c. to pay tithes of corn and hay growing upon his farm, in kind, and by reason thereof had been used to be discharged of tithes of the aftercrop of the same land, and to pay tithes of milk and calves in kind, and by reason thereof had been discharged of tithe of young and barren beasts. And held good upon solemn argument by all the judges.—9 Jac. C. B. *Barter v. Hope*. i. 200

25. *Quære*, whether a country may prescribe in *non decimando* if the incumbent have sufficient support beside.—12 Jac. B. R. *Porter v. Tike*. i. 224

26. If a man gather green pease to eat in his house no tithes shall be paid of them, and this

by the law of the land; but it is otherwise if he gather them to sell or feed hogs.—12 Jac. B. R. 1 Ro. Abr. 647.

27. The bishop of Hereford was sued for tithes of parcel of the demesnes of his bishopric, and a prohibition was granted on the suggestion of a discharge, for which, according to *Wright's case*, a spiritual person may prescribe.—13 Jac. B. R. *The Bishop of Hereford's case*. i. 251

28. Discharge of tithes of the lands of monasteries by prescription was not personal; for having been always (as prescription presumes) in spiritual hands, the law judges that they were *never charged* with tithes; as the pleading is that the lands were *immunes à solutione decimarum negativè non privativè*, viz. uncharged, not discharged, as if they had been once chargeable. The reason whereof was, that being spiritual persons they were able to minister to themselves spiritual rights, and therefore performing *officium*, they might retain *beneficium*; and this *non-charge* standing upon prescription was inherent in the land, not as a thing given, but a *non ens*.

29. Lands that never yielded tithe, and land of the little monasteries so free of tithes, the king, by 27 H. 8. and his patentees were to hold free, not by reason of any privilege which needed to be preserved by any statute, but ever by the grant of the land by any kind of conveyance.—15 Jac. C. B. *Wright v. Gerard and Hildersham*. i. 289

30. An abbot discharged of tithes *quamdiu propriis manibus*, &c. temp. E. 4. made a gift in tail of the land, the abbey was dissolved 31 H. 8. held the issue of the donee should not be discharged under that statute, but if the reversion had returned to the abbot or king before or after the statute, it had been otherwise.—16 Jac. C. B. *Farmer v. Sherman*. i. 303

31. A particular liberty cannot prescribe in *non decimando*.—17 Jac. B. R. *Johnson v. Bois*. iii. 1210

32. If land of a monastery within 31 H. 8. were discharged in the hands of the prior, &c. constant payment ever since the statute does not make it chargeable.—17 Jac. B. R. *The Earl of Clanrickard v. Lady Denton*. i. 306

33. MONTAGUE, C. J. said it was a position in the time of king John, that one ecclesiastical man ought not to pay tithes to another ecclesiastical.—18 Jac. B. R. *Sir Edward Coke's case*. i. 314

34. In a declaration on a prohibition, the question was, whether it were sufficient for the patentee of lands of a greater monastery (but founded within time of memory, and therefore not capable of a discharge by prescription, nor consequently by unity) to allege that the abbot held the lands discharged of tithes

at the time of the dissolution, without shewing how.

35. If a temporal man succeed a spiritual body in discharge, as upon 31 H. 8. it is to be reckoned in a spiritual person or body, not temporal.

36. Laymen may be discharged of tithes in kind by paying compositions for them in money: so land held or enjoyed by parsons or vicars in lieu of them, by grant of the parson, patron, and ordinary.

37. Discharge in abbots must now be proved *à posteriori*, for no man living can now speak to the time of the abbots, &c.—18 Jac. C. B. *Slade v. Drake*. i. 314

38. The pope by his bull might discharge abbots, &c. from payment of tithes, while in their own hands; and although when leased, it should pay tithes, yet upon its expiration the privilege would revive to the patentee.—21 Jac. B. R. *Stonehouse v. Read*. i. 326

39. A dean and chapter are a spiritual body who may prescribe in *non decimando* for them and their tenants.—21 Jac. C. B. *Brig's case*. i. 326

40. Two questions were made:

1st. Whether lands of the order of Præmonstratenses were discharged *quamdiu propriis manibus aut sumptibus excolebantur*.

2d. Whether it were sufficient in pleading such discharge, for the patentee to say that *habuit et habet in propria manu*, without alleging that *propriis sumptibus excolebat*.—22 Jac. B. R. *Dickinson v. Greenhall*. i. 332

41. Fish in a pond, conies, deer, are discharged of tithes *de jure*. *Quære* if pigeons also.—5 Car. C. B. *Flower v. Vaughan*. i. 370

42. Copper mills, fulling mills, shaving mills, glass houses, &c. shall pay no tithes.—5 Car. C. B. *Anon*. i. 370

43. Lime is not titheable but by custom.—7 Car. C. B. *Rocket v. Gomershall*. i. 375

44. A prohibition was granted upon suggestion that the land belonged to a Cistercian abbey before the council of Lateran, 15 John, and had always been enjoyed discharged.—9 Car. B. R. *Anon*. i. 381

45. It was held by Croke, J. that the clause in the 31 H. 8. "that the king and his patentees of any monasteries, &c. should hold and enjoy them discharged of payment of tithes as the late abbot held them;" extended as well to abbeys that came to the king by 27 H. 8. as the superior abbeys, and he said that no question had been made in those times, or in sixty years after the making of the statute; but the court resolved, 1st, that an abbot or ecclesiastical person might prescribe in *non decimando*: but when the corporation is dissolved, or when the corporation grants the land to a layman, such layman shall not have the benefit

of the prescription, for it was personal to the abbot.

2d, That this privilege by prescription or other personal privileges, by bull, or order, belonging to abbeys under £200 per annum, and dissolved by 27 H. 8. were not preserved and given to the king by that statute, and therefore not continued.

3d, That privileges by prescription, or order, or bull, are preserved by the clause of 31 H. 8, and continued so that neither the king, nor his patentee, shall pay tithes. But this extends only to monasteries dissolved after 4 Feb. 27 H. 8. and therefore the lesser abbeys under £200, which were dissolved by 4 Feb. 27 H. 8. are not included within the clause of 31 H. 8.—11 Car. B. R. *Sydown v. Holmes*. i. 383

46. A hundred may prescribe in *non decimando*, but a parish or town cannot.—15 Car. B. R. *Anon*. i. 398

47. No tithes are due of quarries of stone, or of brick or clay. No tithes is due of the roots of underwood, but by custom, which may make that titheable, which is not of itself so. It is a rule, that where the parishioner does any thing which he is not compellable by the law to do, which is for the benefit of the parson, if he demand tithe of the thing, in lieu whereof it is done, prohibition lies.—15 Car. B. R. *Anon*. i. 399

48. To a bill for tithes the defendant answered that the lands were parcel of a priory, discharged by order, without saying more, and held good. *Quod nota*.—15 Car. 2. Scacc. *Page's case*. i. 438

49. A suggestion by a copyholder of a dean and chapter, that all the tenants of their manor have been discharged of a fourth part of the tithes of all their lands (wheresoever lying) upon payment to the lord of so much for a quit rent for Blackacre, is bad; for it cannot be that lands held of others can be discharged by a payment to their lord, it not appearing besides that this payment was any other than a rent, or if it were, that he had any title to receive it. Although the lord might prescribe in such discharge, yet a copyholder cannot, especially for lands not belonging to his copyhold.—16 Car. 2. B. R. *Richardson v. Fauconbridge and others*, i. 441

50. An abbot who held land time out of mind discharged of tithes in the hands of himself and his tenants, aliened 18 H. 6. to All-souls' College: after alienation, the common law right to tithes shall revive, for it shall be taken as a personal prescription and not a real composition, unless specially shewn, which may be in evidence, although it cannot be pleaded.—19 Car. 2. B. R. *Bowles v. Atkins*. i. 450

51. A discharge shall be intended personal

and gone by dissolution.—21 Car. 2. B. R. *Anon*. i. 480

52. In answer to a bill for tithes it was stated that the lands whereof, &c. had belonged to a greater abbey; and been granted to several copyhold and other tenants, under whom the defendants claimed, and that the abbey had held the same for time whereof, &c. for themselves and their tenants, discharged of tithes. An issue was directed to try whether the demesne lands of the abbey of Crowland were and ought to be legally freed and discharged from the payment of all tithes. A verdict was found for the defendant, and the exemption established.—30 Car. 2. Scacc. *Perne v. Styles*. i. 518

53. The court held that the lands of the abbey of Cokersand of the *Præmonstratensian* order, were not discharged by reason of such order, no privilege, exemption, or discharge, being proved.—31 Car. 2. Scacc. *Bradshaw v. Clifton*. iii. 1231

54. A general allegation of discharge by bull, order, prescription, or some other way, is sufficient.—32 Car. 2. Scacc. *Collard v. Newton*. i. 526

55. To a suit for tithes of fen lands lately improved and gained from the water, a *non decimando* under the abbey of Crowland was set up, and an issue directed.—32 Car. 2. Canc. *Perne v. Oldfield*. i. 526

56. Though a layman was not capable of tithes in *prender*, yet he was by way of retainer upon a composition: therefore where there was a grant of a manor and a portion of tithes of the manor, rendering a rent of 5s. such payment was held to be good ground of discharge, and though the grant was before the time of legal memory, yet constant usage being shewn under it, it was held to be sufficient.—33 Car. 2. B. R. *Trollop v. James*. i. 532

57. In answer to a bill for tithes the defendant alleged that the land was formerly a fish pool containing 500 acres, which had been drained about seventy years, which pool belonged to the abbey of Glastonbury, and held to be a good discharge; and that the decoy pool in which he had taken wild fowl having been part thereof, was for the same reason discharged.—1 W. & M. Scacc. *Strode v. Bickham and Elliott*. i. 560

58. A hundred or county cannot prescribe in *non decimando* for a thing which is in its nature *de jure* titheable; but of things which in their nature are not *de jure* titheable, a hundred or county may so prescribe, because they are discharged in such case, unless there be a custom to the contrary, and they do but insist on their ancient right, and that custom has not prevailed against it.—6 W. 3. B. R. *Hicks v. Woodeson*. i. 592

59. *Quære*, Whether it shall be intended that a monastery came to the crown by 27 H. 8. when a surrender is produced in 30 H. 8. where the value is not proved; Donn thought the coming after the 4th Feb. 27 H. 8. the criterion of exemption, that minister's accounts are good evidence of value, and that there may be discharge of tithes in part.—8 W. 3. Scacc. *Wilkinson v. Newson*. i. 618

60. Though one cannot prescribe in *non decimando*, yet against a lay impropriator, the court will presume, no tithes having ever been paid, that they were granted to the terretenant, and look upon them as tithe free.—8 W. 3. Scacc. *Medley v. Talmy*. i. 620

61. An issue was directed to try whether a certain farm was discharged of great tithes and subject to a *modus* for small tithes.—3 Ann. Scacc. *The Archbishop of York v. Duke of Newcastle*. i. 661

62. A custom for a hundred to be discharged of tithe of herbage is not good.—8 Ann. Scacc. *Smith v. Johnson*. i. 692

63. Where the land itself is exempt from tithes it is discharged, into whatever hands it comes.—4 Geo. Scacc. *Benning v. Dowce*. i. 739

64. A general allegation of the discharge is sufficient.

65. It was insisted by defendant that constant non-payment, coupled with being parcel of one of the greater monasteries dissolved by 31 H. 8. was sufficient evidence of exemption; but as the proof was not full as to non-payment, and the defendant did not say the lands were discharged in the abbot's hands, but merely that they were in his hands, the court decreed for the plaintiff.—5 Geo. Scacc. *Hankin v. Gay*. i. 744

66. A defendant insisted upon an exemption for an estate called Hilderstone, and a right of common *sans number in Yealand*, which estate was parcel of one of the greater abbeys; and although it was objected that a common was only a *profit appendre* out of other land, and an exemption could not arise for an appendancy or an appurtenancy, the exemption was allowed.—10 Geo. Scacc. *Lambert v. Cumming*. i. 790

67. Where a defendant insists on a general discharge from tithes, he cannot have the benefit of a partial exemption.—4 Geo. 2. Scacc. *Leigh v. Maudsley*. ii. 25

68. Land exempted from tithes, as being part of the demesnes of an ancient monastery, being inclosed by act of parliament, shall not lose the benefit of such exemption by being inclosed, and shall not be made liable to tithes by any general word in the act.—4 Geo. 2. Dom. Proc. *Pratt v. Hopkins*. ii. 26

69. Lands given to the crown by the statute

31 Hen. 8. are only discharged from tithes, where there had been a perpetual unity until the dissolution by that statute; and therefore, where king H. 8. in the 30th year of his reign, translated a priory and convent to a dean and chapter, and transferred the possessions of the former to the latter, so that their possessions were not surrendered to, or vested in the crown, the court held, that unity of possession of a manor and rectory in the hands of the prior and convent, and afterwards of the dean and chapter, did not exempt the demesnes of the manor from tithes, when the manor and rectory were severed.—6 Geo. 2. Scacc. *Far v. Bardwell*. ii. 35

70. There can be no prescription in *non decimando* by a layman, even against a lay impropriator; the presumption arising from constant non-payment is not sufficient evidence of a legal discharge from tithes; but the lands must be shewn to have been legally exempted, or that the tithes of them have been released.—12 G. 2. Scacc. *Corporation of Bury v. Evans*. ii. 72

71. The question of right is upon an exemption claimed of all the lands that did belong to the monastery of St. Mary, in the neighbourhood of York, which was one of the greater abbeys dissolved by stat. 31 H. 8. It is certain they are discharged in the hands of the crown, and its grantees, in the same manner they were in the hands of the monastery at the time of the dissolution; but the evidence of this exemption depends upon usage. Now it has been very rightly said, that a posterior usage is evidence of the antecedent, and has been always allowed so in cases of this nature, for what other evidence can be had?—14 Geo. 2. Canc. *The Archbishop of York v. Sir M. Stapleton*. ii. 83

72. Where lands appear to have been part of the possessions of a greater monastery, dissolved by stat. 31 H. 8. and there is no evidence of any payment of tithes, the court will consider them to have been in some manner discharged before the dissolution, and it is sufficient to allege that the lands were part of the possessions, and were at the dissolution by prescription, &c. discharged from tithes.—29 Geo. 2. Scacc. *Lamprey v. Rooke*. ii. 148

73. To a libel in the spiritual court for tithes the defendant pleaded, that the lands were parcel of an ancient abbey, and exempt from tithes, and that on the dissolution the lands came to the crown, and ought to be held discharged as freely as they were in the hands of the abbot; and averred, that the lands, both before and since the statute of dissolutions, were and had been absolutely discharged, &c. in whosoever hands they were. The plea being overruled in the spiritual court, a prohibition was

granted.—16 Geo. 2. B.R. *Matthews v. Fitch*.
iii. 1238

74. Where it was in proof that the lands in question belonged to one of the greater houses, and that they had never paid tithes, the court presumed an absolute, not a qualified exemption, though it was also in proof that the house was a Cistercian abbey; and other lands, part of the same farm, paid tithes, while in the hands of tenants; and that the lands in question were never in lease.—21 & 22 Geo. 2. Scacc. *Ingram v. Thackston*. iii. 1242

75. At common law no man could avail himself of a discharge from tithes by grant, but by producing it; yet the Ld. Ch. did not think it necessary to this defence to produce the deed of severance, but to give evidence that there was one. The law requires only the best evidence that the thing in dispute will admit of, and a very slight proof might be sufficient to establish such a deed of severance, though it were lost.—32 Geo. 2. Canc. *Fanshaw v. Rotham*. ii. 158

76. Tenants of customary freeholds may prescribe through their lord in *non decimando*, of which prescription non-payment is good evidence.—2 Geo. 3. B. R. *Stephenson v. Hill*. ii. 185

77. Lands formerly part of the possessions of the abbey of *Cockersand*, of the Præmonstratensian order, are not exempt from tithes, by reason of order, whether in the hands of the owners of the inheritance or not.—2 Geo. Scacc. *Townley v. Tomlinson*. ii. 189

78. A defendant, setting up an exemption from tithes, must state and prove the ground of such exemption.

79. Non-payment of tithes, though from time immemorial, is not a sufficient exemption, without setting out and establishing such exemption to have arisen from the lands having been parcel of one of the greater abbeys.—3 Geo. 3. Scacc. *Breary v. Manby*. ii. 195

80. Lands formerly part of the possessions of the abbey of *Cockersand*, of the order of the Præmonstratenses, are not therefore exempt from tithes in the hands of the owners of the inheritance.—11 Geo. 3. Scacc. *Townley v. Tomlinson*. ii. 258

81. A person setting up by way of defence a prescription in *non decimando*, or claiming an exemption from tithes on the ground that no tithes have ever been paid, must shew the particular ground of such exemption, or it is no defence, amounting to nothing more than mere non-payment of tithes.—19 Geo. 3. Scacc. *Scott v. Airey*. ii. 342

82. In a suggestion for a prohibition, it was stated that the lands were exempt from tithes, as having been holden by an abbey, free from tithes in the hands of the abbot or his tenants;

but the suggestion did not shew any prescription, or that the defendant was the owner of the lands. It was therefore urged that the court had no jurisdiction to grant prohibition; but the court held, that a prescription, though not expressly, was yet substantially alleged, and granted the prohibition.

83. The exemption is laid to be in the hands of the abbot or his tenants, which is an exemption by prescription, and not by order; and therefore, the prohibition is not grounded on the statute.—22 Geo. 3. B. R. *Young v. Naylor*. ii. 349

84. Mere *non decimando*, *per se*, was holden to be no defence for a layman, unless he could invest himself with the character of representative and derivative of an abbey.

85. An abbey, to have a right to prescribe, must have been in possession of the lands time immemorial.

86. Possession at the time of the dissolution, coupled with evidence of a subsequent *non decimando*, and also evidence from doomsday-book that the lands belonged to the abbey, time out of mind, held sufficient to direct an issue to try the prescription.—32 Geo. 3. Scacc. *Clerville v. Oram*. iii. 1369

87. A custom in *non decimando* can only be set up for a large tract of country, well known as a distinct division or district, such as the Weald of Kent, &c.—36 Geo. 3. Scacc. *Nagle v. Edwards*. ii. 427

88. The statute 31 H. 8. comprehended all monasteries dissolved after 4th Feb. 27 H. 8. and lands of such monasteries were exempt from tithes under that statute, though formerly granted away by the crown.—38 Geo. 3. Scacc. *Tate v. Skelton*. iii. 1379

89. Lands which were held discharged before time of memory by one of the alien priories, and coming to the crown on their suppression, were granted to one of the greater monasteries, in whose hands they remained till the dissolution, are no longer exempt.—44 Geo. 3. Scacc. *Penfold v. Groome*. ii. 536

90. Where an exemption from payment of tithes is claimed for a grange formerly belonging to a privileged order (*quandis manibus propriis*) the court will direct an issue to try the exemption, and also to ascertain the extent of such grange, if doubtful from the depositions in the cause.—56 Geo. 3. Scacc. *Byam v. Booth*. ii. 716

91. The maxim *ecclesia decimas non solvit ecclesie* applies only to land actually held by an ecclesiastical person: and therefore, if the land be transferred into the hands of a layman, it becomes liable to the payment of tithes.—59 Geo. 3. Consist. Court. *Lagden v. Flack*. iii. 973

92. Lands which were held discharged of

tithes, before time of memory, by one of the alien priories, and coming to the crown on their suppression, were granted to lay persons, and by them to one of the greater monasteries, in whose hands they remained till the dissolution, are no longer exempt from the payment of tithes.

93. By the common law, all land is equally charged with tithes, and there can be no exemption inherent in the land.—1 & 2 Geo. 4. Canc. *Page v. Wilson.* iii. 1029

94. A general allegation of discharge is sufficient in a bill to establish an exemption from tithes for lands of a greater monastery.—1 & 2 Geo. 4. Canc. *Cook v. Butt.* iii. 1060

95. To support a defence of prescription in *non decimando* on the ground of the lands having belonged to a religious house, the lands must be shewn to have belonged to the religious house before the time of legal memory; it is not sufficient to shew that the lands were in the hands of the religious house at the time of the dissolution.

96. In claiming an exemption from tithes for particular lands, such lands must be accurately described in the defendant's pleadings, and their local situation and boundaries set out.—3 Geo. 4. Scacc. *Markham v. Smyth, Bart.* iii. 1071

97. The privileged orders were capable, like every other religious order, of having their lands *discharged* of tithes by a real composition, or by prescription.

98. The lessee under the crown's grantee of lands, which had belonged to the knights of *St. John* of Jerusalem and his under tenant, may defend themselves against a demand for tithes, just as they might have done, if their lands had belonged to an order, not privileged.

99. In making out a defence, grounded on an alleged *discharge* in the hands of the hospitalers by prescription, it is not necessary to shew possession by them at the time of memory: usage of non-payment, not, in the absence of all conflicting evidence, to be accounted for, except upon the hypothesis of such a discharge, constitutes a *prima facie* case of prescription. 5 Geo. 4. Scacc. *Donnison v. Elsiey.* iii. 1393

DISTURBANCE.—See TITHES, *How to be paid.*

DOWER.

1. In a writ of dower the court at first held, that a demand out of *decimæ garbarum* was certain enough by common intendment; but afterwards they would advise whether such a

demand, without saying *granorum*, (by which it was held corn was signified,) would be good: but it was not necessary to express the setting forth of the dower in the tithes by metes and bounds, for tithes cannot be so set forth.—1650. B. S. *Fairefax v. Fairefax.* i. 406

DUCKS.—See DECOY.

EASTER OFFERINGS.

1. Easter offerings are due of common right at 2d. a head. *Quære*, whether they are due to a lay impropriator. Offerings were said to be a compensation for personal tithes. 10 Geo. Scacc. *Lawrence v. Jones.* i. 801

2. Easter offerings are due of common right. 11 Geo. Scacc. *Egerton v. Still.* i. 818

3. Easter offerings are due of common right, 22 & 23 Geo. 2. Scacc. *Cartham v. Edwards.* ii. 121

4. Libel in the spiritual court for Easter offerings by law and immemorial custom due and payable. The answer denied the custom: and *semble* a prohibition was granted.—32 Geo. 1. *Sloan v. Dr. Vernon.* ii. 169

ECCLESIA.—See CHURCH—DISCHARGE.

EJECTMENT.

1. Ejectment lies for tithes only.—9 Car. B. R. *Baldwin v. Wine.* i. 377

2. Ejectment lies for a portion of tithes. 1656. Scacc. *Hancocke v. Price.* i. 417

3. A judgment in ejectment of tithes, upon demise of J. S. not saying by deed, was reversed in B. R. upon error from C. B.—20 Car. 2. B. R. *Angell v. Rolfe.* i. 477

4. Ejectment lies for small tithes.—1 Ann. Scacc. *Camell v. Clavering.* i. 646

ELEGIT.

1. The court were inclined to think that tithes are extendible by *elegit*: but they clearly held that they are not due *jure divino*. 1649. B. S. *Harwood v. Paty.* i. 405

ENDOWMENT.—See PARSON & VICAR—VICAR—VICARAGE.

1. A vicar was endowed by the pope as supreme ordinary, with a part of the tithes of a manor, and it was held to extend to the freeholders as well as to the demesnes, viz. through all the limits of the manor. But if

the lord had made such a grant before the council of *Lateran*, it would have extended to his own demesnes only.—36 El. B. R. *Higham v. Best*. i. 109

2. Where by endowment in the time of Hen. 3. the vicar should have *minutas decimas et totam decimam garbarum*, it was held that tithe hay should pass, as the usage had been so, although *garba* is at this day used in another sense, for an ancient charter shall be expounded according to the usage.—40 El. B. R. *Barsdale v. Smith*. i. 141

3. A vicar libelled for small tithes upon the composition between the vicar and the parson upon the appropriation, (A. D. 1310.) upon which the defendant pleaded prescription in the parson against the composition; and because the spiritual court allowed the prescription to be pleaded against the composition, the vicar had a prohibition in the King's Bench to bar his own suit, and after many arguments the prohibition stood. And it was also decreed in Chancery that the prescription was not legal against the composition, and an injunction was granted for the vicar to stay the suit of the parson for the tithes limited to the vicar by composition.—4 Jac. B. R. *Pringe v. Child*. i. 166

4. Though tithe wood will not pass by an endowment, under the word *alteragium*, (which in law only extends to small tithes,) yet, by usage, it may well pass under the words *alteragia et minutas decimas*, and under these words sheaves of corn have also passed.—10 Jac. B. R. *Reynolds v. Green*. i. 213

5. The extent of an endowment is triable in the spiritual court.—15 Jac. B. R. *Anon*. i. 262

6. Compositions upon the endowments of vicarages shall be expounded by the common law judges; and the words in such endowments shall be construed according to the usage.

7. Tithes *garbarum* extended to hay and flax by reason of usage.—5 Car. C. B. *Anon*. i. 369

8. An endowment dated within legal memory was holden not to be positive proof of the vicarage having then first commenced, the endowment reciting a former appropriation of the rectory, with a reservation of the right to ordain a vicar.—19 Geo. 3. Scacc. *Broadley v. Brocklebank*. iii. 1281

9. *Semble*, than an endowment may be varied by subsequent usage.—24 Geo. 3. Scacc. *Carr v. Henton*. iii. 1320

10. A vicar endowed with the tithes of eleven of 36 yard lands, the rest belonging to the rector.—25 Geo. 3. Scacc. *Lewis v. Giffard*. iii. 1330

11. Account of vicarial tithes decreed against a *modus*, for tithe hay and all other

vicarial and small tithes, the vicarage appearing to have been established by an endowment in 1367, within legal memory.—53 Geo. 3. Cane. *Scott v. Smith*. ii. 658

12. Where a defendant in his answer states that a *modus* has been immemorially paid to a vicar, and the endowment is shewn to have been within time of legal memory, the court will allow it to be re-stated, if an ancient payment in lieu of tithes has been proved.—55 Geo. 3. Scacc. *Preston v. Bennett*. iii. 705

13. A minute and particular enumeration of several articles in the instrument of endowment does not preclude the vicar's right to other small tithes not mentioned therein.—56 Geo. 3. Scacc. *Manby v. Curtis*. iii. 733

14. The word "gardens" in an endowment will not of itself carry garden stuff, or things originally grown in gardens, if also grown elsewhere; neither will the word "curtilages."—57 Geo. 3. Scacc. *Williams v. Price*. iii. 828

ESTOVERS.—See *MODUS, Fuel*.

EVIDENCE.—See *PRESUMPTION*.

1. A copy of a pope's bull is not evidence, the bull itself must be produced.—16 Jac. B. R. *Britton v. Ward*. i. 298

2. Where a *modus* is laid for a whole district, though an action be between particular persons, none of those who claim under the same prescription shall be admitted to give evidence, for those within the district are parties in interest, though not in the action; so the evidence of any person who is owner, proprietor, or farmer of a parsonage, shall be rejected.—17 Jac. B. R. *The Earl of Clanrickard v. Lady Denton*. i. 306

3. Depositions in the spiritual court rejected as evidence in C. B. not being taken in a Court of Record. FOSTER and REEVE against CRAWLEY, thought they ought not to be received, although the parties would consent.—17 Car. 4. C. B. *Anon*. i. 401

4. The parliament roll and not the journal book is the best evidence of a prorogation of parliament.—24 Car. B. R. *Hobart v. Boraston*. i. 404

5. Copy of a bull of Pope Innocent III. out of the register of Alvingham deposited in a college in Oxford (not a party) allowed to be read.—1654. Scacc. *Towrie v. Pearson*. i. 411

6. A trial at law was directed upon a bill for tithes in the Exchequer: the plaintiff filed another bill to have the use of certain leger-books in the custody of the defendant. A demurrer was overruled; for upon the trial

at law, the former proofs are only evidence : and other and contrary evidence may be given, besides, these books concerning both the plaintiff and defendants, are like court-rolls, which belong both to lord and tenants, and copyholders; and therefore they may have bills one against another, to have the use of them, as well as against strangers.—13 Car.

2. Scacc. *Langham v. Lawrence and others.* i. 432

7. In debt upon 2 E. 6. brought by a proprietor of tithes, after a verdict for the lessee or present proprietor, the reversioners shall have advantage of it, and give it in evidence, for he could not be an immediate party, for that must be prosecuted by the lessee or present tenant. But as a reversioner can be made a party to a suit in equity, it is otherwise with depositions where he was not so.

8. Depositions in another cause cannot be read for a defendant where they could not have been read against him.—20 Car. 2. Scacc. *Rushworth v. the Countess of Pembroke.* i. 458

9. Entries in a predecessor's books evidence for the vicar, by consent, upon a new trial, on payment of costs of the first.—31 Car. 2. Scacc. *Legross v. Levenmore.* i. 521

10. A copy of a terrier not allowed to be read.—10 Ann. Scacc. *White v. Keate.* i. 699

11. The *Valor Beneficiorum* taken in the reign of Hen. 8. is not conclusive.

12. An objection that a witness has the inheritance of lands in the parish (in the hands of a tenant) only goes to his credit.—2 Geo. Scacc. *Ayde v. Flower.* i. 722

13. A decree between other parties may be read as a precedent but not as evidence.

14. An inquisition without a commission not allowed as evidence.—4 Geo. Dom. Proc. *Austen v. Nicholas.* i. 734

15. Account books, &c. of a preceding vicar evidence for his successor.—5 Geo. Scacc. *Lord Arundel's case.* i. 744

16. A paper read to prove a composition, though no direct proof that the defendant claimed under the person who signed it, but afterwards held that it was not sufficient to support plaintiff's demand, for the uncertainty.—5 Geo. Scacc. *Gregory v. Lutterell.* i. 744

17. It is, *prima facie*, an objection to a witness that he is an inhabitant of the parish where the *modus* is insisted on, and it lies on the other side to shew he enjoys no titheable lands.—5 Geo. Scacc. *Watson v. Lindsal.* i. 747

18. An impropriator's predecessor's book admitted as evidence of a mortuary due.

19. *Quere*, if a book of the lord of a manor is evidence of quit-rents; though a bailiff's

accounts of rents paid and allowed is evidence. 5 Geo. Scacc. *Aron.* i. 748

20. Where the proof of non-payment and that the land was part of the possessions of a greater monastery was belief and hearsay, an account was decreed. *Quere*, whether the hearsay was of the non-payment, or of the land having been part of the possession of a greater monastery.—6 Geo. Scacc. *Clark v. Dashwood.* i. 756

21. Depositions in a former cause, respecting *modus*, where the owner of the land was not a party, cannot be read. The bill and answer in a former cause must be read to make the depositions evidence in another cause, to shew that it was between the same parties, or their derivatives, and the same matter in issue. 8 Geo. Scacc. *Baker v. Sweet.* i. 776

23. A former decree was read in evidence, where the lessee, without the impropriator, was party.—8 Geo. Scacc. *The Bishop of Lincoln v. Sir W. Ellis.* i. 777

24. The method of proving whether lands were acquired before the council of Lateran, is only by payment of tithes, which will induce a presumption that they were acquired after. 9 Geo. Scacc. *Lord v. Turk.* i. 778

25. An issue was directed to try whether there had been any variation in the payment of tithes, or sums of money in lieu of them, for houses in London, according to the statute 37 Hen. 8. It was moved, that the plaintiff should produce at the trial the books of the former rectors: and although it was objected that these were properly private books, and the plaintiff's own evidence, yet as they had before been produced at the hearing of the cause, and as the issue to be tried is to inform the conscience of the court, the jury ought to have all the light the court can give them: So *per curiam*, the plaintiff was ordered to produce these books at the trial.—9 Geo. Scacc. *Bennett v. Treppas and others.* i. 787

26. Entries in account books by a steward of defendant's ancestor, of payments of a *modus* to the vicar in lieu of tithe of certain lands admitted as evidence.—11 Geo. Scacc. *Woodnoth v. Lord Cobham.* i. 802

27. Copy of an agreement between the abbot of Quarrer and the monks of Lyra, from the Bodleian library, was read in evidence, upon the production of the Statutes of Oxford, that no book, &c. should go out of that library, although neither a record nor a public thing. 11 Geo. Scacc. *Downes v. Mooreman.* i. 803

28. Motion to inspect court rolls of defendant's manor, to see what proportions of tithes were paid by him and other defendants, tenants of the manor, refused.—2 & 3 Geo. 2. Scacc. *The Bishop of Hereford v. the Duke of Bridgewater.* ii. 9

29. Decree not allowed to be read; because not shewn to be concerning the same lands or the same title.

30. Ministers accounts in 34 & 35 H. 8. permitted to be read, though it was objected, that the surrender of the monastery ought to be shewn, or when it came to the crown.

31. A deed was produced by the plaintiff, dated 30 March, 1690, and it was admitted it was old enough to be read without proof; but Baron CARTER objected, that the plaintiff should give some account how he came by it; the LORD CHIEF BARON, however, said, he could not see the use of that, and it would be very inconvenient, for then there must have been an interrogatory to prove this matter by depositions, for it could not be inquired into on the order to prove exhibits, and the deed was read at last, *by consent*, though the rest of the barons seemed to be of opinion with the Lord Chief Baron. Another deed in 1694 was offered, but objected to by the defendant, as not being old enough to prove itself; and by the court, this deed was not admitted to be read, for though sometimes 35, or even 30 years, have been thought sufficient, yet not where it is objected to, but the usual rule is forty years.

32. A verdict not proved to be touching the same lands, not permitted to be read.—3 & 4 Geo. 2. Scacc. *Benson v. Olive*. ii. 24

33. A modus being insisted on in answer to a bill for tithes, and a cross bill being filed to establish the modus, but stating the modus differently from the answer; depositions taken in the original cause were not permitted to be read by the plaintiff in the cross suit, on the ground that the modus was a different modus from the one stated in the answer, and therefore not in issue on that examination.—6 Geo. 2. Scacc. *Christian v. Wren*. ii. 35

34. Lands which belonged to a monastery dissolved by 31 Hen. 8. are discharged in the hands of the crown and its grantees, in the same manner they were in the hands of the monastery at the time of the dissolution; but the evidence of this exemption depends upon usage. Now it has been very rightly said, that a posterior usages is evidence of the antecedent, and has been always allowed so in cases of this nature, for what other evidence can be had?—14 Geo. 2. Canc. *The Archbishop of York v. Sir M. Stapleton*. ii. 83

35. The receipt of exchequer is no office of record, except for matters relating to the revenue, and an old deed found there, alleged to be the record in a cause relating to tithes, determined before the pope's delegate, was therefore held not to be evidence.

36. No proceedings in the ecclesiastical courts are records, but only evidences of sen-

tences in those courts.—18 Geo. 2. Canc. *Colegrave v. Juson*. ii. 94

37. A return from the first fruits office, and an inquisition *post mortem*, are not conclusive evidence of value, but are sufficient, unless contradicted.—18 Geo. 2. Canc. *Ekin v. Pigot*. ii. 95

38. On a question of *modus*, no inhabitant of the parish, who can claim any benefit under the custom, can be examined as a witness.—21 Geo. 2. Canc. *Cart v. Hodgkin*. iii. 1240

39. An ancient book of a former collector of tithes, found in the hands of his successor, admitted as evidence, without proof of the hand-writing of the former collector.—26 & 27 Geo. 2. Canc. *Jones v. Waller*. ii. 141

40. It is objected, the *modus* is too rank; for it appears by the monasteries accounts, that on the dissolution of monasteries in the time of H. 8. it was said, in the return to the commission directed to inquire, &c. that the value of tithe-hay here was 40s. This was done, 1st, To shew that tithes in kind were then paid. 2dly, If tithes in kind were not paid, yet such a *modus* to pay 7l. for tithes that amounted to 40s. only is too rank, as being unreasonable. As to the first, I cannot take it in that sense, because it is said in the answer, there is some land to which the *modus* does extend; and if any land is liable to tithes in kind, possibly the return may have relation to that; but it is said to shew that there was no *modus*. There may be an omission, and at most it is but evidence on one side, and therefore will be laid before a jury, and any evidence may counterbalance it. I think, therefore, to over-rule the *modus* upon the strength of that record at the hearing of the cause, when it is admitted no tithes in kind have been paid, is going too far abundantly, and cannot be conclusive.—*Per* Ld. Ch. 19 & 20 G. 2. Canc. *Hardcastle v. Smithson*. ii. 102

41. The abbot of Lyra in Normandy sent a certificate of the original agreement between a rector and vicar in relation to tithes; but though it appeared to come out of the abbot's hands, yet as it did not appear that it came out of the charter-house of the abbot, or that he was the proper officer to keep the records, it could not be admitted to be read. Even before the reformation, a certificate from a foreign abbey was not allowed.—20 Geo. 2. Canc. *Carte v. Ball*. ii. 103

42. A survey (from the first fruits office) of the possessions of a nunnery, taken in 1563, on the dissolution of monasteries, held good evidence to prove the vicar's right to small tithes.—20 & 21 Geo. 2. Scacc. *Almond v. Master and Fellows of Trinity College*. ii. 106

43. Where evidence of the manner of tithing is in the hands of the patron or rector, a court

of equity will direct it to be produced.—25 Geo. 2. Canc. *Forbes v. Phelps.* ii. 126

44. A receipt for tithes, purporting to be signed by the receiver of the tithes, but appearing by evidence to have been in fact signed by his deputy, was not admitted to be read in evidence; but the court permitted the cause to stand over, with liberty to exhibit an interrogatory to prove the payment of the tithes.—30 Geo. 2. Scacc. *Yate v. Leigh.* ii. 151

45. In debt on 2 E. 6. it was held, that the same evidence was admissible as to proof of tithe, as if it had been in ejectment, but as tithes properly lay in grant, 20 or 30 years possession, unaccompanied by deeds, would be very weak evidence of title.—9 Geo. 3. B. R. *Kinaston v. Clarke.* ii. 234

46. Proceedings in a former cause between the same parties allowed to be read in evidence.—11 Geo. 3. Scacc. *Townley v. Tomlinson.* ii. 258

47. Evidence in a former cause between the same parties allowed to be read.—13 Geo. 3. Scacc. *Morgan v. Neville.* ii. 282

48. In a suit by a rector for restitution of glebe lands lying in the common fields, and converted by the defendant, the occupier, to his own use, and the metes and boundaries of which had been removed, an ancient map of the parish, in the possession of the defendant, who was the lord of the manor, and which map had been made by direction of a former lord of the manor, was holden to be good evidence to shew the quantities and boundaries of the glebe lands.—15 Geo. 3. Scacc. *Allot v. Wilkinson.* ii. 291

49. A bad *modus* may be evidence of the vicar's right to tithes in kind, because it is evidence of the endowment of the tithes.—16 Geo. 3. Scacc. *Travis v. Oxtan.* iii. 1248

50. In a question upon the custom of tithing in the parish of A.; evidence that such a custom exists in the adjacent parishes, is not admissible. *Secus*, if the custom be laid as the general custom of the whole county.—18 Geo. 3. B. R.—*Furneaux v. Hutchins.* ii. 317

51. A verdict in an issue between the vicar and an occupier is good evidence in a case between the vicar and another occupier, respecting the same *modus*.—21 Geo. 3. Scacc. *Travis v. Chaloner.* iii. 1307

52. Though from the largeness in amount of certain sums, alleged to be immemorial payments, as compared with the value of the living, from a different *modus* having formerly been set up, and from an ancient terrier; there was reason to believe, that the payments were not ancient payments, yet the court considered these circumstances as only the *media* of proof, affording inference, and not as con-

clusive evidence; and directed issues.—22 Geo. 3. Scacc. *Ashby v. Power.* iii. 1308

53. When a witness on cross-examination appears to be an interested person, the objection to his competency must be taken the moment it is discovered, and before the depositions are read.—23 Geo. 3. Scacc. *Scott v. Fenwick.* iii. 1318

54. A decree between a rector and a vicar is not binding or conclusive on the vicar's successors, unless the ordinary is a party to the suit, notwithstanding the decree is in favour of the vicar.—24 Geo. 3. Scacc. *Carr v. Henton.* iii. 1320

55. The Lord Chief Baron said, that although in order to establish a real composition for tithes, it was not now considered as absolutely necessary to produce the deed, yet evidence must be given of such a deed having existed, that where such evidence rests on reputation, such reputation must be distinctly of payments having been made *under such a deed*, and that those payments had their origin under an instrument made within time of memory; otherwise it will be evidence of a prescriptive payment.—29 Geo. 3. Scacc. *Hawes v. Swaine.* ii. 357

56. The Ecclesiastical Survey does not affect to be a correct description of the things comprised in it, but merely of the value of the receipt, and where the usage has been contrary, much reliance is not to be placed on it.—32 Geo. 3. Scacc. *Tamberlain v. Humphreys.* iii. 1367

57. A MS. in the Cottonian Library from the Museum, marked "*Claudius B. 3.*" read in evidence.—33 Geo. 3. Scacc. *Garnons v. Barnard.* ii. 380

58. Proof of delivery of a cheese at the house of the tithe-gatherer, but not to himself, cannot be admitted to prove perception of a *modus*.—33 Geo. 3. Scacc. *Wake v. Russ.* ii. 400

59. A terrier cannot be received in evidence, unless it comes from the proper repository, the registry of the diocese, or a copy from the parish registry, if the original cannot be found.—34 Geo. 3. Scacc. *Atkins v. Hatton.* ii. 403

60. A paper, purporting to be a terrier, but which was found in a different place from the proper repository, was not admitted in evidence; and the court held, that as it purported to be a terrier, it could not be received as any other document.—34 Geo. 3. N. Pr. *Miller v. Foster.* ii. 412

61. A book found in the herald's office, purporting to be an account of the possessions of a monastery, is not admissible evidence of that fact.—35 Geo. 3. Scacc. *Lygon v. Strutt.* ii. 421

62. An instrument purporting to be an en-

dowment, without the seal, and another purporting to be an *insperimus* thereof under the seal of the bishop, were rejected as coming out of private hands unconnected with the matter in dispute.

63. A terrier found in the archdeacon's registry is admissible.

64. A terrier, although not signed by the impropriate rector, nor by any person for him, is evidence against him as to tithes due to him in the parish.—37 Geo. 3. Scacc. *Potts v. Durrant*. ii. 432

65. No evidence is sufficient to support a real composition, unless it have some reference to a deed of composition.—37 Geo. 3. B. R. & Dom. Proc. *Knight v. Halsey*. ii. 438

66. Fifteen years possession of a benefice is *prima facie* evidence of a regular induction, and of reading the thirty-nine articles.

67. Payment of tithes by the defendant a parishioner, is *prima facie* evidence against him of the rector's title.—37 Geo. 3. Scacc. *Chapman v. Beard*. ii. 466

68. In proving the parochiality of the demesnes of Thoby, some of the witnesses, whose depositions were read, appeared to be parishioners of Gyngé Mounteney; *Romilly* objected that they were interested in the parochiality of these lands on account of the contribution to parish rates, and therefore not admissible to prove the fact. The court held them admissible, not being interested in the subject of the suit.—37 Geo. 3. Scacc. *Lord Petre v. Blencoe*. ii. 467

69. Terriers, though signed by the churchwardens only, are admissible in evidence, even against the rector. Books of former lessees of the rectory, (whose interest had determined) containing entries of the receipt of agistment-tithe, admitted as evidence to support the claim of the impropriator to that tithe. Depositions in a suit between a former lessee of the impropriator and an occupier, were held to be admissible in evidence, though the bill and answer in the suit were not produced.—40 Geo. 3. Scacc. *Illingworth v. Leigh*. iii. 1385

70. An entry in a parish register of different *moduses*, the sum total of which was in the handwriting of a deceased vicar, admitted in evidence.—50 Geo. 3. Scacc. *Berigal v. Nicholson*. ii. 583

71. An ancient book from the registry of Lincoln, containing, *inter alia*, what are therein called copies of the endowments of certain vicarages therein mentioned, admitted in evidence to prove the value of the vicarage.

72. Where the words *minutæ decimæ* occur in ancient documents, there is a strong presumption against the existence of a customary payment; and where the value of the tithes is given in such documents, it implies a taking in

kind.—51 Geo. 3. Scacc. *Halse v. Eyston*. ii. 597

73. In this case the book from the registry of Lincoln, referred to in the last preceding case, was admitted in evidence.—51 Geo. 3. Scacc. *Hebden v. Freeman*. ii. 598

74. A book containing copies of ancient endowments, kept in the registry of the bishop of Lincoln, though ancient, and appearing to have been compiled by the ordinary, was rejected as evidence, on the ground that it was a mere historical collection, and not one made under a judicial act.—31 Geo. 3. Scacc. *Harwood v. Sims*. ii. 601

75. It is no objection to evidence of reputation of a *modus*, that the deceased person from whom it came was liable to pay tithes. S. C. ii. 603

76. On the part of the plaintiff (the rector), a bill filed by a former rector, and the answer to it, were read; but upon attempting to read a cross bill and answer, between the same parties, it was objected that the answer could not be admitted being evidence, for the party, by the party himself; for the plaintiff it was urged, that this might be taken as part of the proceedings in the former cause; *Thomson, B.* When issue is joined, or any decree is made, you take the bill and answer as introductory to, and explanatory of the decree; but here it does not appear that any thing was done upon the cross bill and answer. The objection was allowed.—51 Geo. 3. Scacc. *Bennett v. Neale*. ii. 630

77. In a suit instituted by the rector for an account of great tithes, where the decree would not be evidence for or against the vicar; his evidence to prove payment of the small tithes to himself is admissible.—51 Geo. 3. Scacc. *Barker v. Baker*. ii. 647

78. In an action on 2 & 3 Ed. 6. by the plaintiff, as owner of tithe-hay, against the defendant, as occupier of a close, for not setting out the tithes, copies of a bill and answer, in a suit by the vicar for tithe hay against S. L. then occupier of the close, and from whom defendant purchased, denying the vicar's right, and setting up a right in the ancestor of plaintiff, on which the vicar abandoned the suit, was holden evidence against the defendant.—53 Geo. 3. B. R. *Countess of Dartmouth v. Roberts*. ii. 655

79. Action against the defendant, occupier of a farm in the township of Down Holland, for not setting out tithes. Defence, a farm *modus*: the plaintiff shewed by surveys and terriers that no *modus* within the township was mentioned in them; against which the defendant proved by witnesses an uniform payment of a sum certain, in respect of his tenement, for upwards of 50 years; Held, that the

plaintiff might on cross-examination ask those witnesses whether other tenements in Down Holland did not pay a similar sum.—53 Geo. 3. B. R. *Blundell v. Howard*. ii. 665

80. A receipt, even of more than fifty years old, offered to be put in to prove a money payment, purporting by it to have been received in lieu of tithes, is not admissible evidence of the fact of such customary payment having been acted on, so as to establish the defence of a *modus*; unless it can be also proved who the parties to the receipt were, and in what character they stood, and unless proof be given of the handwriting or death of the party giving it. Wood, B. *dissentiente*.—55 Geo. 3. Scacc. *Manby v. Curtis*. iii. 701

81. A composition real by grant of land in lieu of tithe cannot be proved by reputation of the fact of such an agreement having existed, and being the origin of the exemption claimed, although corroborated by evidence of non-payment of tithe for the district claiming the exemption, unless the deed, or evidence of one having once existed, be put in proof.—55 Geo. 3. Scacc. *Chatfield v. Fryer*. iii. 707

82. Depositions in an old cause admitted, although neither bill, answer, nor decree, could be found.—56 Geo. 3. Scacc. *Byam v. Booth*. ii. 716

83. An old receipt of a former rector, in the hands of a defendant, for a money payment in lieu of tithes, where there was a probability that it had come to him from an ancestor of the same name, was holden to be admissible evidence to support a *modus*.

84. A valuation of tithes, made by a surveyor at the instance of the rector, with reference to certain money payments reputed to have been always made in lieu of such tithes, is not evidence to fix the rector with an acknowledgment of such money payments, unless it be distinctly proved that the surveyor was expressly required by the rector to make the valuation with reference to such payments.—56 Geo. 3. Scacc. *Bertie v. Beaumont*. iii. 739

85. The ecclesiastical survey is admissible evidence to prove an ancient endowment.—56 Geo. 3. Scacc. *Cunliffe, Bart. v. Taylor* iii. 743

86. On an issue directed to try a farm-*modus*, the occupier (the appellant) proved by the evidence of old persons that a sum of 5*l.* 3*s.* 4*d.* had been invariably paid for the vicarial tithes of his farm for above sixty years past. The vicar (the respondent) offered to give in evidence, to prove rankness, a rate-paper, from which it appeared that the whole parish had, during the same period, paid rates in the same way in lieu of vicarial tithes, amounting together to 68*l.*: also certain entries, without date, but proved to be of the handwriting of the end of the thirteenth or beginning of the fourteenth century,

in a book called the Chartulary of Glastonbury abbey: viz. an entry of the ordination of the bishop on the appropriation of the church of Sturminster to the abbey: and the entry immediately following, beginning with the words "portions of the church of Sturminster assigned to the vicarage to be ordained to remain in the same for ever," and then enumerating the several articles, with the value of each, without any allusion to a money payment in lieu of the tithes, and making the whole vicarage of the clear yearly value of 9*l.* 12*s.* 5½*d.* This entry was offered as a copy of, or extract from, the endowment, the original being lost. The book was produced from the muniment room of the marquis of Bath, who had lands which had formerly belonged to the abbey. Besides entries in which the abbey was concerned, the book contained several idle stories, and a great deal of other miscellaneous matter. The rate-paper and chartulary rejected, and verdict for the *modus*. But the court of exchequer, being of opinion that these documents ought to have been admitted, ordered a new trial. Proof for appellants as before, and the rate-paper and entries in the chartulary read for the respondent, besides other documents, to rebut the presumption of a *modus*. Verdict for respondent, and against the *modus*; and new trial, moved for on the ground of the alleged improper admission of the chartulary in evidence, refused; and appeal to the lords from this order of refusal.

Objections to the admission of the entries:—1st, that the book did not come from the proper custody; 2d, that the endowment itself could have been no evidence on this issue; and if it could, yet the entry respecting the portions assigned to the vicar did not purport to be a copy or extract, and was not good secondary evidence; 3d, that this was *res inter alios acta*.

The order of the court of exchequer, refusing the new trial, affirmed by the house of lords, on the grounds, 1st, that the entries had been properly received in evidence, the custody being proper, the entries being authentic copies of instruments of which the originals would have been good evidence; and *res inter alios acta* being in this case no objection; and also that the whole of the rate-paper was proper evidence on this particular issue: 2d, that, supposing the entries to have been improperly admitted, the verdict was warranted by the other evidence, and that it signified nothing to say that the jury might possibly have come to their conclusion upon the ground of the chartulary, because the object of an issue out of equity was to satisfy the conscience of the court; and where the evidence was such as fully to satisfy the conscience of the court, a court of equity was not bound, either in tithe causes or others, to order a new trial, or to direct an issue originally

at all; exercising, however, a sound discretion in each particular case, whether to do so or not.—55 G. 3. Scacc. & Dom. Proc. *Bullen, App. v. Michel, Resp.* iii. 757

87. The amount of money-payments laid as farm-moduses in an answer to a vicar's bill, appearing to be totally inconsistent with the value of the vicarage as estimated by the ancient documents usually put in evidence; but the payments appearing to have been uniformly and uninterruptedly made, the court would not make any decree without first directing an issue.

RICHARDS, C. B. said these ancient documents have never been considered as conclusive, in any case that I have ever met with. And when I see an uniform money-payment proved to have been constantly paid for so many years, I cannot take upon myself to say that evidence which is anterior shall, on that account alone, destroy evidence which is posterior in point of time.—57 Geo. 3. Scacc. *Jee v. Hockley.* iii. 816

88. Old terriers, recording that tithe of hay was payable in kind, signed by the rector, church-wardens, overseers, and some of the resident parishioners, held good evidence to rebut the presumption of a farm-modus attempted to be established, by proof of a money-payment having been uniformly rendered within living memory, and the absence of any evidence even of reputation, that the tithe had ever been taken in kind: and that although such terriers were not proved to have been signed by any person interested in the farm.—WOOD, B. *dis-sentiente.*

Nor would the Court grant an issue in such a case.—56 Geo. 3. Scacc. *Mytton v. Harris.* iii. 1391

89. Money payments in lieu of tithes, ascertained by reference to, and regulated by the poor's rate, holden to be bad as moduses; and the vicar's books are evidence to shew that the money payments had been so ascertained and regulated.—57 Geo. 3. Scacc. *Walter v. Holman.* iii. 830

90. A receipt for payment (by a person sued by a vicar for tithes) of the plaintiff's bill of costs, is evidence of the suit having resulted in favour of a vicar. So is an entry to that effect in a former vicar's books.—57 Geo. 3. Scacc. *Parsons v. Bellamy.* iii. 832

91. The three legitimate repositories of terriers and vicar's books, to make them evidence, are the church-chest, the registry of the bishop, and the registry of the archdeacon. The books contain historical facts connected with the parish; and what place is so proper for the custody of such a piece of evidence as the chest of the parish church? The propriety of its custody is founded on the same principles as those which regulate such questions with

respect to terriers.—57 Geo. 3. Scacc. *Armstrong v. Hewitt.* iii. 835

92. A book from the registry of Lincoln, containing (*inter alia*) what were called copies of endowments of certain vicarages, was received as evidence of an endowment of a vicarage in Northamptonshire, by the lord chief baron (after considerable doubt) on the production of cases wherein it had been received before.

(As the lord chief baron seems to have admitted the evidence on the authority of the cases cited; it ought therefore to be observed, that in *Halse v. Eyston*, and *Hebden v. Freeman*, no objection was made to the evidence; but in *Harwood v. Sims*, on objection taken, it was expressly rejected.)—57 Geo. 3. Scacc. *Leonard v. Franklin.* iii. 838

93. Evidence of reputation of certain lands having been inclosed in pursuance of an agreement, not admissible.

94. A copy of a lost terrier was rejected as evidence.—57 Geo. 3. Scacc. *Leathes v. Newitt.* iii. 841

95. A document produced by a party as evidence in his behalf must be accompanied by proof of the custody whence he derived it, to satisfy the court of its authenticity, or it will not be permitted to be read.

96. Entries in a book in the possession of a defendant were not permitted to be read as evidence to support a modus, on the testimony of a witness, who deposed, that he believed the whole of the writing in the said book to be of the handwriting of W. Stanley, the grandfather of the defendant, (who had been rector of the parish many years before) and "that the deponent was the better enabled to state of whose handwriting he believed the said book to be, from his having compared the writing in the said book with the original will in Doctors' Commons of the said W. Stanley, which appears to be wholly in his own handwriting; and that he believed the said book, and the said will, to be written by one and the same person:" such evidence amounting merely to inference, and not actually proving that either the book or the will were written by W. Stanley.—58 Geo. 3. *Randolph v. Gordon.* iii. 877

97. Payment of 8d. an acre as a modus for hay, being proved by parol testimony and receipts to have been made as far back as living memory would extend, the court held, that the ecclesiastical survey, in which the tithe-hay was valued at 3s.; a terrier, stating one moiety of the tithe of corn and all other tithes, great and small, to belong to the vicar; other terriers, stating the vicar to be entitled to the tithe of hay, or a modus of 8d. an acre; and an entry in the parish register of a memorandum that the vicar had, in a certain year, taken the tithe in kind of some of the occupiers, and had agreed

with the rest for the compositions exceeding that sum; did not rebut the evidence in support of the *modus*; and therefore directed an issue to try it.

98. Much reliance cannot be placed on the ecclesiastical survey or the ancient documents of a similar description, usually produced in tithe causes.

99. Parol evidence as far back as living memory could reach of the uninterrupted payment of a sum of 5s. by the occupiers of land in a certain district, in lieu of the tithe of hay throughout such district, was holden to be rebutted by terriers stating the 5s. to be payable in lieu of hay grown in crofts only, and an account of the tithe was decreed.

100. Entries in a book called a parish register, produced from an iron chest kept in the vicarage house, were admitted as evidence on the part of the vicar; the court holding, that the book came out of the proper custody, and that it was a public book belonging to the parish. —58 Geo. 3. Scacc. *Drake v. Smith*. iii. 888

101. An answer, by a former rector, to a bill filed to establish a *modus*, of a certain measure of meal, as to one farm, admitting that the parish is exempt, in consideration of a commutation for meal, is not only admissible but strong evidence to prove a district *modus*. —58 Geo. 3. Scacc. *De Whelpdale v. Milburn*. iii. 894

102. Where a bill has been amended, the amended bill is the only one upon record: an original bill in a former suit cannot therefore be read as evidence to prove what a plaintiff considered his right to be at the time of filing it. —58 Geo. 3. Scacc. *Hales v. Pomfret*. iii. 915

103. A *modus*, or a sum of money, laid as payable in lieu of tithe of hay and all small tithes, is not supported by proof of the payment for hay and non-payment of hay or any small tithes, either in kind, or *sub modo*; and an account was decreed.

104. Payments laid as *moduses* being proved to have been always paid within memory, though called by the witnesses compositions, and not opposed by evidence of their origin, held to be sufficiently proved to establish them on a defence of *moduses*. —59 Geo. 3. Scacc. *Driffeld v. Orrell*. iii. 934

105. The court will not, on a bill for tithes, praying a discovery of documentary evidence, order a tithe-book of a former rector, admitted to have been in the possession of the defendant's attorney, to be produced, unless it clearly appear from admissions in the answer that it would assist the plaintiff's case; and a motion for such purpose was therefore refused, but without costs, there being some colour for the application. —59 Geo. 3. Scacc. *Bligh v. Benson*. iii. 956

106. Reputation is admissible in cases of private right, where a class or district of persons is concerned, and is evidence as to a parochial *modus*, but not as to a farm *modus*, or to support a prescriptive right, except as to a right of way. Proof of a fixed payment for a farm during a long period, even without mention of a *modus*, is evidence of a *modus*. —59 Geo. 3. Canc. *White v. Eisle*. iii. 909

107. In a suit in the spiritual court for *inter alia* wood; on reading the evidence, an objection was taken to one of the witnesses, on the ground that he was a farmer, occupying land in the parish, who might be interested in the result of this suit. The court held, that although he had no direct interest, he might be ultimately interested in the event of the suit, and the party had not waived the objection merely by administering interrogatories to him, as it did not appear that he was a farmer in the parish; but if so, *non constat*, that he was a farmer of wood-land. It is a matter of ordinary prudence to administer the interrogatories, and the objection is taken the first time they are offered to be read. The court is bound to consider the witness as incompetent by law, therefore, rejects his evidence. —59 Geo. 3. Consist. Court. *Lagden v. Flack*. iii. 973

108. A rector's books were not allowed to be proved *vide voce*, and leave to put off the cause in order to prove them by interrogatories was refused.

109. Terriers alone, without some evidence of payment, are not sufficient to prove a *modus*. —59 Geo. 3. Canc. *Lake v. Skinner*. iii. 976

110. Evidence of a rector's handwriting of receipts by comparison with his signature in the register's book, the entries in which it was his duty to sign, held sufficient.

111. Testimony of occupiers is wholly inadmissible for any purpose.

112. The personal answer of a defendant to a libel in the ecclesiastical court, preserved among the records of the register, is admissible evidence in a suit for tithes in this court by a party claiming under the same title as the person whose answer it was. —1 Geo. 4. Scacc. *Taylor v. Cook*. iii. 1005

113. A money payment of five shillings yearly, at Lammas, by every occupier of lands of tithements within a district, set up as a *modus*, in lieu of all tithe hay within the district, although proved *prima facie* in point of fact: held to be disproved as a *modus* for all the hay in the whole township, by the evidence of terriers, stating, that "in (the district) only five shillings per year for all the hay in their (the occupiers) crofts" was payable, the parol testimony of the money-payment, and the evidence of terriers, being quite consistent with each other, there being nothing contradictory in the terriers

so limiting, and specifying the object and consideration of the sum, proved to be paid generally throughout the parish in lieu of hay, to such hay as was grown in crofts.—1 G. 4. Scacc. *Drake v. Smith, Esq.* iii. 1012

114. A book in the handwriting of A. B. purporting to contain an account of tithes collected by him seventy years ago, cannot be received in evidence, without proof that A. B. was collector of tithes at that time.

115. In a suit for tithes by the lessee of an ecclesiastical corporation aggregate, to whom the rectory belonged, ancient documents in their possession, purporting to be accounts furnished by some of their members employed to collect the tithes, and appearing to be approved and settled, are admissible in evidence.

The statutes of the corporation enjoining the appointment of collectors, together with the internal evidence of the documents, and their coming out of the proper custody, held sufficient proof that the accounting parties were really collectors.

116. As to the principle on which entries in a rector's book are admitted as evidence for his successors.—*Qu.*

117. Entries of tithes received, in the books of an ecclesiastical corporation aggregate entitled to a rectory, are evidence for their successors.

118. Whether entries in the books of a lay impropriator in fee, of tithes received, are evidence for those claiming under him.—*Qu.*

119. An entry by a deceased person may be evidence, though he could not in his lifetime have been examined to the fact.—1 & 2 G. 4. Canc. *Sturt v. Lee.* iii. 1013

120. On an issue directed to try a modus a lessee by parol of the vicar, disputing the existence of the modus, may be examined on the part of the vicar, if he has previously released the vicar. A new trial granted on the ground that the evidence of such a witness was improperly rejected.—1 & 2 G. 4. Scacc. *Robinson v. Williamson.* iii. 1038

121. The omission in the earliest two or three of a series of old terriers, of any notice of money payments set up as moduses, does not destroy the evidence of the existence of the moduses arising from the subsequent terriers which do notice them; nor even a variance in the amount of one of the sums, and a qualification of the payment of it occurring in one of them. Where the payments relied on are supported by the testimony of witnesses, who prove that such payments have been in fact made accordingly; and moduses of 4d. for a colt, 1d. for a barren cow agisted, and 1½d. for cow and calf or calving cow, were therefore sent to a trial at law on such conflicting evi-

dence.—1 & 2 G. 4. Scacc. *Stuart v. Greenall.* iii. 1040

122. Parol evidence of a payment for hay and agistment is rebutted by evidence of a modus having been established at law and in equity for hay.—1 & 2 G. 4. Scacc. *Williamson v. Hutton.* iii. 1040

123. A modus set up for hay, hemp, and flax, is so far proved by receipts for a money payment made for hay, hemp, and flax, for forty-five years back, although earlier receipts describe it as payable for hay only, which would have otherwise been conclusive against the occupiers, as that the payment must be made the subject-matter of an issue.

The payment being called a "hay rent" in the receipts, is no objection to them, as evidence of the existence of a modus.—1 & 2 G. 7. Scacc. *Manby v. Lodge.* iii. 1052

124. On a question of parochial modus, referred to a trial at law, testimony, offered as evidence of reputation, in proof of the custom on which the right to the advantage of the *modus decimandi* was founded, "that the money payments constituting the alleged modus had been uniformly made, beyond living memory, and that the witness had heard old persons, who at that time occupied lands in the parish, and were long since dead, say that it had always been the custom to make such payments," was held to be admissible evidence of reputation on that subject, against an objection taken of interest in making such a declaration on the part of the deceased persons on whose information the evidence was founded.—3 G. 4. Scacc. *Moseley v. Davies.* iii. 1082

125. Declarations by deceased parishioners, who were tithe-payers, and therefore interested, are admissible as evidence of reputation in support of a parochial modus, set up in defence to an action by a rector for not setting out tithes. But the judge has a right to leave such evidence to the jury, with his own impressions on its weight.—4 & 5 G. 4. Scacc. *Deacle v. Hancock.* iii. 1126

126. On issues to try moduses, owners of lands in the parish are not competent witnesses; and the depositions of such witnesses as are dead cannot be read, if it is shewn that they were interested, though no such thing appears in the deposition, and though their evidence was read in equity.

127. Semb. that the receipts of a vicar's lessee are admissible evidence of a modus.

128. On the trial of a modus, the receipts of a lessee of a deceased vicar are evidence; and if a witness proves that her father and brother were tenants of the tithes for above 40 years, that is sufficient to let in their receipts, without proving a lease to them.

129. If at the trial, an interested witness, who produces old documents, be allowed to give evidence of the place from which he brought them, thereby tending to establish their authenticity, though he ought not to have been permitted to give such evidence, yet a court of equity will not send the case to a new trial, if there is evidence enough to support the verdict, exclusive of the documents produced by the witness.—5 Geo. 4. N. P. *Jones v. Carrington*. iii. 1131

130. Evidence of reputation of the exemption of the district from tithes, read *de bene esse*.—5 Geo. 4. Scacc. *Donnison v. Elsley*. iii. 1393

131. An original ancient book, containing, amongst other matters concerning a particular see, the entry of the endowment of a vicarage by a former bishop, to whom the rectory was granted by the crown, with license to appropriate, and coming from the registry of the diocese, is evidence of the endowment. But regularly, a copy of the entry is not admissible.

132. Depositions of a defendant, who set up a farm modus, allowed to be read *de bene esse*, in favour of co-defendants, who set up other farm moduses.

133. In proving a farm modus a defendant is bound, first, to prove distinctly that the farm was an ancient farm, and then to shew the particular payment in respect of that ancient farm.

134. There being but one witness in support of a farm modus is no objection to an issue in point of law, provided such witness be uncontradicted.—5 Geo. 4. Scacc. *Wolley v. Brownhill*. ii. 1152

135. The title of a portioner must be either proved by shewing the grant under which he claims, or if it have been lost, by that species of evidence which will enable the court to presume that such a grant once existed.—5 Geo. 4. Scacc. *Wolley v. Platt*. iii. 1167

136. Where a payment in lieu of tithes of the ancient demesne lands of a manor was proved to have been paid to and accepted by the rector for the time being for upwards of a century; and from the recitals in a lease in the reign of Cha. 1. there was strong ground to presume that it existed before that period; and there was no evidence of tithes in kind having ever been rendered; yet, it being manifest from certain ordinances and other ancient documents produced and proved in the cause, that the payment had its origin subsequently to the time of legal memory, the court, notwithstanding the antiquity of the payment, decreed an account of the tithes, but without costs.—6 Geo. 4. Scacc. *Fisher v. Lord Graves*. iii. 1180

137. A modus alleged in an answer to be

payable in lieu of tithes, is not supported by proof of a payment of larger amount.—5. C. iii. 1180

EXCOMMUNICATION.

1. Excommunication discontinued except in certain cases.—53 Geo. 3. c. 127. s. 1. i. 257

EXPOSITION.

1. Ecclesiastical instruments are to be expounded according to the ecclesiastical law.—16 Jac. B. R. *Britton v. Ward*. i. 298

EXTRA PAROCHIAL TITHES.

1. Extra parochial tithes granted by the king in the forest of *Ingelwood* to the prior and canons of *Carlisle*.—18 Edw. 1. i. 4

2. Extra parochial tithes granted by the king in the forest of *Dean* to the bishop of *Llandaff*, and a petition for tithes of his lands newly assarted.—33 Edw. 1. i. 6

3. A commission directed to inquire concerning the boundaries of the extra parochial lands in the forest of *Dean*.—35 Edw. 1. i. 6

4. Relief ordered on the petition of the bishop of *Carlisle* for redress against the prior and canons of *Carlisle*, who under colour of a grant by the king of the tithes of assarts, and of other lands to be assarted, within the forest of *Ingelwood*, which were extra parochial, carried away tithes of wool and lamb and agistment within the forest and parish of the bishop.—4 Edw. 3. i. 13

5. According to *HERLE, C. J.* the bishop of the place shall have extra parochial tithes; and a man cannot grant them to whom he will.—7 Edw. 3. i. 14

6. By *THORPE*, it used to be law that the king had and used to have tithes in extra parochial places, (and not the bishop of the place) to grant to whom he pleased; but the archbishop of *Canterbury* has petitioned parliament to have such tithes, which petition remains to be tried.—22 Edw. 3. i. 17

7. *HANKFORD* said that a parson might have tithes by prescription in an extra parochial place.—14 Hen. 4. i. 29

8. Lands must be parcel of a parish by prescription or by act of parliament; and extra parochial tithes are due to the king.—24 Car. B. R. *Benister v. Wright*. i. 404

9. Tithes decreed to the king for the cattle agisted and depastured on the extra parochial lands lying with the forest of *Exmore*, though in his own possession.—1657. Scacc. *Mills v. Edbroke*. i. 425

10. Tithes of extra-parochial lands in the Bedford Level decreed to the grantees of the crown.—13 Ann. Scacc. *Shaw v. Topping*. i. 707

11. The lands called Redmore near the parish of Lakenheath, in the county of Suffolk, and Haltree are within the limits of Bedford Level, and liable to pay tithes to the grantees of the crown of extra-parochial tithes.—1 Geo. Scacc. *Shaw, Bart. v. Styles*. i. 710

12. The tithes of all extra-parochial lands belong *jure corona* to the king, and the title of the crown is not confined to such extra-parochial lands only, as were forest or parts of forest land.—60 Geo. 3. Scacc. *Attorney General v. Lord Eardley*. iii. 986

FARM.—See *MODUS, Farm*.

FERÆ NATURÆ.—See *PARTRIDGES*.

FERN.

1. A prohibition was granted to a suit for tithes of fern, as not titheable.—28 Car. 2. B. R. *Dr. Wat's case*. i. 508

FISH.—See *DISCHARGES*.

1. This act, or any thing therein contained, shall not extend to any parish which stands upon, and toward the sea-coasts, the commodities and occupying whereof consists chiefly in fish, and have by reason thereof used to satisfy their tithes by fish; but that all and every such parish and parishes shall hereafter pay their tithes according to the laudable customs, as they have heretofore of ancient time within these forty years used and accustomed.—2 & 3 Edw. 6. c. 13. s. 11. iv. 88.

2. Prohibition to a libel for the tithes of pilchards taken in the sea, upon a suggestion of a custom that the owner of the fishing boat has one moiety of the fish, and the fisherman the other moiety, and that the owner had used to pay the tenth of his moiety in discharge of all, &c. allowed.—1 Jac. C. B. *Holland v. Heale*. i. 156

3. No personal tithes shall be paid out of the clear gains of the party; as if the owner of a ship lends it to mariners to go to Ireland for fish, for a certain quantity of fish to be paid to him upon their return, no tithes upon their return shall be paid by the mariner to the parson out of those fish which the owner shall have for the hire of his ship, because this is a personal tithe, and therefore ought to be paid out of the clear gain. And so in Devon upon the hire of a seave or boat to take pilchards or herrings. By DODDERIDGE.—14 Jac. B. R. 1 Ro. Abr. 656. *Gosling v. Harding*.

4. Where the parson sued for tithe fish in the spiritual court, according to a certain custom of tithing, (which he might do) viz. to take the half of the tenth part of all fish caught and brought into Yarmouth, but the defendant alleged another custom, viz. to pay the tenth part after satisfying the owner of the vessel for the charges of the voyages in fish, for which no tithe was to be paid; held, that as different customs were alleged, and the common law and spiritual law differed in the point of prescription, (which is there good in ten years) prohibition should go.—14 Jac. B. R. *Gosling v. Harding*. i. 258

5. Tithe of fish is due merely by custom, which if disputed shall be decided by the common law courts, for though customary payments for tithes due *de jure*, may be sued for in the spiritual court: yet if the tithe be not due *de jure*, but by custom only, as of fish, rabbits, ore, limekilns, &c. the custom shall be tried at common law, after which the spiritual court may proceed upon it.—3 Car. C. B. *Anon*. i. 357

6. Tithe of fish at Yarmouth, &c. is by custom.—4 Car. C. B. *Stile's case*. i. 361

7. Tithes may be payable by custom for sea fish.—8 Car. B. R. *Anon*. i. 376

8. Nothing *feræ naturæ* is titheable by the common law, as rabbits, partridges or fish in a pond.—9 Car. B. R. *Anon*. i. 382

9. Tithes are not payable for fish taken in rivers, but by custom, per Richardson, C. J.—9 Car. B. R. *Dawes v. Huddleston*. i. 392

10. Fish in rivers not titheable, if not by custom.—15 Car. B. R. *Anon*. i. 398

11. No tithes shall be paid in kind, without a custom, for fish taken in the high sea out of any parish: Jones, J. said that upon an appeal to the delegates out of Ireland in the Lord Desmond's case, it was agreed, that for such fish so taken only personal tithes are due *deductis expensis*.—14 Car. B. R. *Long v. Dirrell*. 1 Ro. Abr. i. 637

12. No tithes shall be paid in kind *de jure*, without a custom, for fish taken in a common river which is not inclosed, as in a stew inclosed, because they are *feræ naturæ*, though they be taken by one who has a several fishery there, and though the place be within the parish of the parson who claims them, for this is a personal tithe, which ought to be paid *deductis expensis*.—1 Ro. Abr. 636.

13. A custom to pay less than a tenth part for tithes of fish, which are not due without custom, may be good, but to pay less for things of which tithes are due of common right, is not good without other matter.—18 Car. 2. B. R. *Penrose v. Shepherd*. i. 448

14. The fishermen of the parish of Paull, otherwise Pauly, in Cornwall, ought to pay tithes of all sea fish taken by them, except such

fish as are taken for bait, or measured in the sleeves of the seynes, whether used for bait, or not.—32 Car. 2. Scacc. *Gwavas v. Teage*. i. 528

15. Tithe of fish is due by custom only.—3 Ann. B. R. *Anon.* i. 666

16. Fish in a pond are not titheable without a custom.—10 Ann. Scacc. & Dom. Proc. *Nicholas v. Elliott*. i. 698

17. A tenth part of all fish caught at sea, and brought into St. Ive's for sale, is due to the impropriator of the rectory; and the fishermen are bound to give notice to the impropriator of the arrival of the fishing boats, and of the time of tithing, and to set forth upon the shore the full tenth part of the fish brought in.—13 Ann. Scacc. *Lord Stamford v. Luke*. i. 699

18. A custom alleged to pay 5s. for each boat, in lieu of tithe of all fish caught therein.—2 Geo. Scacc. *Swatman v. Bonner*. i. 721

19. Tithes in kind decreed of fish caught at sea, and brought into the parish of Mevagissey.—2 Geo. Scacc. *Wolridge v. Henna*. i. 726

20. A custom was alleged that 12d. in the pound of the clear profit should be paid for all fish brought into Hartlepool and there sold, and the 20th part of the clear profits of all the fish caught and sold at sea, &c. by the fishermen of that parish; and the court proposing that such payments should be taken without costs on either side, the account was by consent taken according.—5 Geo. Scacc. *Earl of Scarborough v. Hunter*. i. 747

21. The rector of Scarborough, in Yorkshire, is entitled to the 20th part of the fish, or the 20th part of the value of such fish as are taken by any fisherman inhabiting the town of Scarborough, wheresoever the same may be caught or sold.—6 Geo. Scacc. *Thompson v. Field*. i. 761

22. A Custom, that every parishioner and others, being proprietors or occupiers of any fishing boat, fishing net or other fishing craft, usually tied, moored, or kept within the parish (when not used in fishing) ought to pay to the impropriate rector the tithe of all great and small fish (except certain specified fish) taken in a certain bay into which the rectory extended, or the adjoining seas, established. And the tithe was not considered as a personal one, liable to reduction for expenses.—1 Geo. 2. Scacc. *Gwavas v. Kelynack*. ii. 1

23. The tithe of fish taken in the sea is personal, and it seems to be payable in the parish where the fisherman resides.

Semble, that when the inhabitants of the parish of A. are hired to work in catching or taking fish in the seas, in or with nets, boats, and craft belonging to the inhabitants of the parish of B. (and which nets, boats, and craft, in the intervals of the fishing season, are housed and kept in the latter parish) and are by contract

to have a certain sum of money, and also a share of the fish caught by them for their work, and the fish, when caught, is brought into the parish of B. the tithe of the fish allotted to the parishioners of A. in part of payment, is payable to the parson of the parish of A. and not to the parson of the parish of B. A trial at law of an alleged custom to the contrary, was directed.—

6 Geo. 3. Scacc. *Williams v. Barton*. ii. 217

24. Custom, that tithes in kind ought to be paid to the vicar for all sea fish taken or caught by or with any seynes, nets, or boats, that had been housed or wintered at or in the parish, in the interval between the last preceding fishing season, and the season during which the fish were caught or taken, (whether such seynes, nets, or boats, were the property of parishioners or not) established.—15 Geo. 3. Scacc. *Borlase v. Batten*. ii. 300

25. In a bill for tithe of fish; all the persons interested in any one particular adventure must be made parties.—41 Geo. 3. Scacc. *Coppard v. Page*. ii. 404

FLAX.—See PARSON AND VICAR.

1. Tithes of flax are small tithes.—14 Jac. B. R. *Noah Webb's case*. 1 Re. Abr. 613.

2. It was held by three judges against Holt, C. J. (who was absent when judgment was finally given) that flax was a small tithe, on the ground that tithes are great or small according to the quality of the thing itself, and not the quantity grown.—5 W. M. B. R. *Wharton v. Lisle*. i. 529

FODDER.—See DISCHARGE.

FORCIBLE ENTRY.

1. An indictment lies for a forcible entry for tithes, and restitution thereupon.—6 Car. B. R. *Anon.* i. 372

FOULNESS ISLAND.

1. The rector of Shopland, in Essex, with the chapel of Foulness annexed, is entitled to the tithes of corn, grain, and hay, of the farm called Little Borrowood, situated in the island of Foulness.—9 Geo. Scacc. *Tyrell v. Kennett*. i. 779

FUEL.

1. For broom, furze, or any other fuel spent in a parishioner's house, no tithes are due or payable.—40 El. B. R. *Austyn v. Lucas*. i. 142

2. A custom to pay a hearth penny in lieu of all tithes of combustible wood is good.—41 El. B. R. *Green v. Hun*. i. 147

3. Furzes are titheable, and therefore there must be a custom to discharge them; and those burnt in a house of husbandry may be so discharged.

4. Where the libel was for tithes of furzes burnt by the plaintiff in prohibition, who suggested that they were burnt in his house, &c. and that in such cases the custom was that no tithes should be paid, and the defendant pleaded *alapa hoc*, that they were burnt in his mansion-house, held a good traverse (and not contradictory to the libel); for if they be burnt any where but in his house of husbandry, the tithes shall be paid.

5. Wood for fuel is titheable.—7 Car. C. B. *Rocket v. Generalball*. i. 375

FURZE.—See FUEL.

1. A prohibition was granted to a suit for tithes of furze used for sheep-pens.—28 Car. 2. Dr. *Wat's* case. i. 508

2. A custom in *non decimando* that no tithes shall be paid in a parish for wood and furze burnt is good.—12 W. 3. Scacc. *Dowdeswell v. Harker*. i. 637

3. Tithe is payable for furze, made into faggots and sold, but not for furze burnt, or used upon the premises.—12 Ann. Cant. *Roffe v. Harding*. i. 705

4. Tithe of furze is due of common right, but may be exempted by being used for husbandry purposes; but furze cut in one parish, and used for husbandry purposes in another parish, is not exempt from tithes.—12 Geo. 3. Scacc. *Ellis v. Fermor*. iii. 1242

GARBA.—See ENDOWMENT.

1. In regard it was an ancient charter, and constantly had been used to extend to hay, the word *garba* might well extend thereto, although at this day it is commonly used in another sense.—40 El. B. R. *Barsdale v. Smith*. i. 141

2. Garba shall be taken according to common construction, and to signify corn bound up, and not in the large extent for bundles of any thing else.—24 Car. B. R. *Southcott v. Southcott*. i. 402

3. The word "*garba*" means *quod ligari potest*, and probably peas were actually garbed, when the word was introduced into the canon law; but since that, barley, oats, and peas are not garbed, and wheat continues to be garbed, because the straw is of value, and to preserve it unbroken; and yet barley and oats are *decimæ garbarum*, which words carry great tithes in contradiction to vicarial tithes. Spelman explains *garba* to mean such fruits of the earth as

are naturally fit to be bound; and Lindwood explains it the same way, and extends it to wood. It follows, that "*garba*" means and refers to such grains, as when come to maturity, were usually, or might be bound together, and does not extend to things improper to be bound.—33 Geo. 2. Canc. *Sims v. Bennett*. ii. 172

GARDEN.

See ENDOWMENT—MODUS, Garden.

1. Tithes are due for cabbage or gilly flowers, or other herbs in a garden, unless there be some custom to discharge them.—4 Car. C. B. *Stile's* case. i. 361

GLEBE.—See RECTORY—TITHES, how pass.

1. Incumbents may dispose by their wills of the profits of any corn sown by them upon their glebe.—28 Hen. 8. c. 11. § 6. iv. 37

2. *Quare*, whether the lessee of the glebe of the parson for years or life shall pay tithe thereof.—30 Hen. 8. i. 50

3. Glebe demised to a layman shall pay tithe.—32 Hen. 8. i. 51

4. If a parson lease his glebe for years, the lessee shall not pay tithes, for the glebe never was chargeable with them.—5 El. Anon. i. 58

5. The vicar shall not have tithes of the glebe of the parson, although he be endowed with the small tithes of all the parish, for *ecclesia ecclesie decimasolvere non debet*. But if the parson lease his glebe, the vicar shall have small tithes of the lessee, and the lessor himself shall have the great tithes. But if the vicar be specially endowed with small tithes of the glebe, he shall have them of such as was glebe at the time of the endowment.

6. Glebe discharged of tithes by unity at the dissolution shall be discharged by 31 Hen. 8. and 32 Hen. 8. in the hands of the patentee.—39 El. B. R. *Blinco v. Barksdale*. i. 134

7. If a parson sow his glebe and after leases over the land, and the vendee severs the emblements, the parson shall have tithes of them, notwithstanding his own grant.—40 El. B. R. *Humfrey's* case. 1 Ro. Abr. 655.

8. If a parson sow his glebe, and dies before severance, and after a successor is inducted, and the executor or his vendee sever the emblements, the successor shall have tithe of them; for though the executor represents the person of the testator, yet he cannot represent him as person, inasmuch as another is inducted. S. C. ib.

9. If the parson of a church not impropriate, lease his glebe, the lessee shall pay tithes. But otherwise of an impropriate church, because of the stat. 31 H. 8. c. 13.—5 Jac. B. R. Anon. i. 172

10. If a parson sow his glebe, and when is deposed before severance, and another is induced, it seems he shall have tithes of his predecessor.—11 Jac. B. R. *1 Ro. Abr.* 655.

11. If the vicar occupy his glebe, he shall pay no tithe, but if he let it, the tenant shall pay. The court seemed to think that if a vicar sowed his glebe and died, his executor must pay tithes.—14 Jac. C. B. *Harris v. Cotton.* i. 260.

12. A vicar may have by prescription tithe of the herbs of the rector's glebe.—19 Jac. C. B. *Poole v. Reynolds.* i. 322.

13. If a vicar be endowed generally of part of the glebe of the parsonage, he shall not pay tithes to the parson. But if the endowment be that he shall pay tithes of the glebe to the parson, the spiritual composition shall bind the vicar, and constant payment to the parson shall be evidence of such composition, though it be not shewn.—6 Car. B. R. *Walrish v. Cropton.* i. 373.

14. A parson of a parish having land in another parish, parcel of his glebe, may prescribe in *non detinendo* for him, his farmers, and tenants.—13 Car. B. R. *Dr. Word v. Taylor.* 1 Ro. Abr. 655.

15. Glebe land is not of common right titheable.—2 W. & M. Scacc. *Streaton v. Downes.* i. 568.

16. The vicar is entitled to tithe of corn sown by his predecessor's lessee on the glebe, although the impropiator is entitled to great tithes generally. So decreed by two barons against one, in the absence of the chief baron. 4 W. & M. Scacc. *Sanders v. Ryall.* i. 570.

17. Non-payment of tithes of the glebe by a lessee, will induce the court to presume that it was discharged upon the endowment.—7 W. 3. Scacc. *Hawkins v. Chittle.* i. 616.

18. Where a vicar libelled a tenant for tithes, a suggestion that the land was glebe parcel of the rectory, and that the rector had always held the same for himself, his farmers and tenants, free from payment of tithes, was held sufficient for a prohibition; but in the principal case it was refused upon an affidavit that the land was not glebe.

19. Incumbents may by their wills dispose of any corn sown by them upon their glebe.—11 W. 3. C. B. *Burton v. Cookerman.* i. 643.

20. A custom that the glebe of the vicar in his own or tenant's hands should be discharged of tithes, is good.—4 Ann. Scacc. *Waterman v. Jones.* i. 671.

tard seed, cole seed, and rape seed, &c. though in a large acceptance it may extend to seeds.

—24 Car. B. R. *Southcott v. Southcott.* i. 402.

2. It was said that by *decima granorum* corn was intended.—1650. B. S. *Fairefax v. Fairfax.* i. 400.

3. Eyre said, it had been ruled at the *assizes*, that if a man sow his land with clover, and make his profit by the seed, this being a grain, the parson shall have tithe of it; but if he convert it into hay only, and make his profit of the hay, the vicar being endowed of the tithe of hay, shall have it as a small tithe, except only such as is necessarily cut with the corn among which it grew.—5 W. & M. B. R. *Wharton v. Lisle.* i. 579.

GRANT.

See TITHES, *how paid*.—IMPROPRIATOR.

1. Grants ought not to be restrained to their strict words, but are to be construed according to the intent of the parties.—86 El. B. R. *Higham v. Best.* i. 109.

2. Grant by letters patent of *omnes et cum modis decimas granorum, herbagii, factis, agnorum, vitulorum, &c. infra dominium de Bury Sancti Edmundi quondam spectant, et quae collectae fuerint per elemosinam* of the said abbey. No tithes, except the tithes of corn, were ever collected by the abbot of the abbey; yet it was holden, that all the tithes *infra dominium de Bury* passed by the grant.—2 Jac. B. R. *Barker v. Bacon.* iii. 1202.

3. The Queen grants a messuage and all her tithes in B. thereunto belonging and used, and it was found that no tithes were demised; on special verdict the court conceived the tithes did not pass.—25 Car. 2. B. R. *Cockam v. Hale.* i. 500.

4. Though grants of franchises and liberties from the King made before time of legal memory must be allowed in eyre, or some court of record, within memory, or they cannot be pleaded; yet where a private deed of a thing which may be claimed by usage, is by usage supported, such a deed may be pleaded but cannot be relied upon *virtute cujus*, &c. without evidence of usage.—33 Car. B. R. *Trotter v. James.* ii. 539.

5. Where a defendant claimed the tithes of a manor and certain lands as a portion of tithes in gross, and the proof was of a grant of all and all manner of tithes, without any mention of a portion (which is a thing distinct from tithes in a general acceptance), the bill was dismissed, and the party had a decree on his cross-bill to enjoy his tithes according to his grants.—11 Geo. Scacc. *Downes v. Mooreman.* i. 803.

6. Bill by impropiator for tithe hay, under a grant of *tithe of tithes* by hay, dismissed;

GRAIN.—See PARSON AND VICAR.

1. Grain, according to common construction, shall be taken for corn, and not seeds, as mus-

no instance of payment being proved, and moduses having been paid to the vicar by those who had meadow land only.—2 Geo. 3. Scacc. *Stone v. Rideout*. iii. 6

7. A grant from the crown, *decimas bladarum, et feni et omnes alias decimas*, these general words not sufficient to bar the rector of his common law right to tithes, unless it had been expressly stated in the grant what was the right of the crown.—20 & 21 Geo. 2. Canc. *Ekins v. Dorrer*. ii. 108

8. A grant from the crown of an advowson (excepted in a former grant under general words) will be presumed after a possession evidenced by title deeds for 133 years and three presentations.—59 Geo. 3. Canc. *Gibson v. Clark*. iii. 946

9. Where in a grant (*ex mero motu, &c.*) by the crown, of extra-parochial lands, the words "tithes, oblations, and obventions" were found to have been introduced amongst the general words, they were held not to pass the tithes of such lands, in a case where it was in evidence that the tithes were in lease at the time of the grant, and that the crown had continued to demand them whenever they had reverted; the court determining that the continued exercise of such strong acts of ownership was sufficient to counteract the slight effect of such words, even if, when so introduced, they were of any force at all, and were not rather attributable to mistake.—60 Geo. 3. Scacc. *Attorney-General v. Lord Eardley*. iii. 986

GRASS.—See TITHES, by whom payable—

TARES—HAY.

1. No tithe is due for grass in the swathe cut for working cattle and for their maintenance in tillage.—9 Car. B. R. *Crawley v. Wells*. i. 382

2. If a man cut down grass, and before he makes it into hay, being only put into swathes, he carries it away, and gives it to his plough cattle for their necessary sustenance, not having sufficient for their sustenance otherwise, no tithes shall be paid thereof.—S. C. 1 Ro. Abr. 645.

3. Tithe is due for grass upon the mowing of it.—13 W. 3. B. R. *Selby v. Bank*. i. 640.

4. Grass cut and given green to the beasts of plough shall not pay tithe.—34 Geo. 3. Scacc. *Callum v. Hopes*. ii. 413

5. If a title to the tithe of artificial grasses cut green can be supported, it can only be taken as a tithe in the nature of agistment.—5 Geo. 4. Scacc. *Lewis v. Young, Bart.* iii. 1135

HAULM.—See STRAW.

HAY.—See DRAINAGE—MODUS, Hay.

1. It was said that it was not a good custom to pay cocks of hay for all tithe hay.—37 EL. B. R. *Jesop v. Payne*. i. 110

2. A custom that all occupiers of meadow ground in a parish have used to make the first vesture into hay, and pay the tenth thereof in satisfaction of the tithe of such first vesture and the aftermath also, was held good.—41 EL. B. R. *Johnson v. Ambrey*. i. 147

3. A custom to make the first crop of hay into small cocks, and to set out the tenth cock, in lieu of all tithes as well of the first mowth, as the latter mowth of a meadow for the same year, is bad; but to make it into great cocks, or to carry it to the parson's barn would have been good; and Popham said, that of right without any special custom alleged, no tithes shall be paid for hay of the latter mowth, for the rule in our law is, that tithes shall be paid *ex annuatim renovantibus simul et semel*.—2 Jac. B. R. *Hall v. Fettiplace*. i. 157

4. A prescription to pay the tenth part of corn, for the tithe of the corn and also of the hay upon the head-lands is bad, for the tenth is due for the corn.—2 Jac. B. R. *Parrey v. Charncey*. i. 159

5. Prescription to make up the first crop is a good discharge of the after crop. S. C.

6. A custom to cut the grass and make it into cocks, and to set out the tenth cock for the parson in discharge of all tithes whatsoever renewing or arising upon the land from which the hay was taken in the same year, is good.—4 Jac. B. R. *Greene v. Austen*. i. 164

7. A custom was alleged that the tenth grass cock should be set out for the parson, who was then to make it into hay on the owner's land; upon a libel for disturbing the parson in the use of a way, a prohibition was refused, as the custom was accessory to the principal matter which was spiritual, although it were afterwards alleged, that by the custom of the country, the parson should not have the privilege of making it there, but should carry it out for that purpose, which, Warburton said, seemed to him unreasonable.—14 Jac. B. R. *Reynolds v. Neuberry*. i. 259

8. A custom to make grass into grass cocks, and set out the tenth cock for the parson, in full satisfaction of the first and latter math, held good, in divers places they set out the tenth acre of wood standing, and so of grass.—16 Jac. C. B. *Hide v. Ellis*. i. 303

14 Jac. B. R. *Barham v. Goose*.

15 Jac. B. R. *Poppinger v. Johnson*.

Contra. 1 Ro. Abr. 644.

9. Headlands and butts in corn-fields are free from tithes of hay, for they are left for the turning of the plough in ploughing the lands

of which the parson has tithe corn, and these could not be cultivated unless they were left.

—2 Car. B. R. 104. *Anon.* i. 356

10. A suggestion was made of a custom that the parishioners in a manor used to make the tithe hay for the parson, and by reason thereof to be discharged of tithe of hay of headlands, &c. and also that of such hay no tithe ought to be paid, but as there was no averment that the hay was growing upon headlands, &c. it was held bad; but they said, that the consideration of making hay was a good discharge, because it is more than they are bound to do.

—3 Car. B. R. 110. *Wood v. Sponsford* i. 359

11. Tithe of hay mown to feed the deer in *Hatfield Chase*, is due of common right, and shall be paid, unless there be a custom to the contrary; and if extra-parochial they are payable to the king. —48 Geo. 3. B. R. *Proodger v. Kenning*. i. 449

12. *Quere*, Whether hay may be set out in cocks out of the swathe, without tedding? —

5 W. & M. Scacc. *Nash v. Pocock*. i. 581.

13. *Cinquetail*, which stood forced, in which was the profit, and not in the stalk, shall be looked upon for tithe as hay. —6 W. & M. Cam. Scacc. *Seares v. Geler*. i. 583

14. Tithe of hay is a great and not a vicarial tithe. —11 W. 3. Scacc. —*Folshier v. Ward*. i. 683

15. A custom that after grass is put into cocks, the owner is not to rake together the grass round the said cocks, is void. —12 W. 3. Scacc. *Stoughton v. Hildes*. i. 688

16. Tithe is due for grass upon the mowing of it. —18 W. 3. B. R. *Selby v. Bank*. i. 640

17. A custom, that if a parishioner fed his sheep with his grass until June or August, that then he might mow the coarse grass, with which they fed their sheep in winter, whereby the parson had *decima de decima* of the sheep, &c. without setting out any tithe, is *in non decimando*, and void. —13 W. 3. B. R. *Selby v. Clarke*. i. 641

18. The custom of the parish of Wonerth, in the county of Surrey, is, that the farmer shall make the mowing into grass cocks, and the rector make it into hay, on the land. —1 Geo. Scacc. *Wobb v. Gorden*. i. 711

19. The parson is not obliged to take the tithe of grass the day it is cut, but may let it lie long enough to make it into hay, and what is a reasonable time for that purpose, (because of the accidents of wind and weather) must be decided by a jury. —6 Geo. B. R. *South v. Jones*. i. 749

20. Tithe hay is to be paid in grass cocks. —11 Geo. Scacc. *Smithson v. Dodson*. i. 801

21. Parishioners are not bound, *de jure*, to make tithe grass into hay; but only to cut the grass, and lay it into heaps, or cocks. —3 Geo. 2. Canc. *For v. Ayde*. ii. 21

22. The parson is entitled to make his tithe grass into hay on the land producing it. —16 Geo. 2. Scacc. —*Crabb v. Haynes*. iii. 90

23. Setting out the tithes in grass cocks, made from the swathe, without tedding the same, is a good mode of setting out the tithe of hay, and the occupier is not obliged to ted the same, unless by custom. —16 Geo. 3. B. R. *Delamotte v. Cutting*. ii. 306

24. At common law grass is tithable in grass cocks, after having been tedded in the course of the process of making it into hay.

25. Tedding is the first scattering abroad out of the swathe, and before the grass so tedded is put into grass cocks. That operation is previously described in the custom as here stated; therefore what follows, viz. "et post primam circumlationem inde," must mean after the first scattering abroad from the small cocks so before tedded; and then the tenth cock *inde*, (that is, when made again into cocks from such last-mentioned scattering abroad out of the small cocks so before tedded) was to be set out for the rector. —48 Geo. 3. B. R. *Newman v. Morgan*. ii. 565

26. The common law mode of tithing hay is in the cocks into which the grass is first collected after cutting and tedding; although the parson cannot conveniently make his tithe into hay, while the parishioner is making his nine parts, without either mixing the whole again, or committing a trespass by treading on the parishioner's hay. —49 Geo. 3. C. B. *Hallwell v. Trappes*. ii. 572

27. A title to tithe-hay will give a title to that tithe, whether the hay be made of natural grass, or of artificial grasses. —5 Geo. 4. Scacc. *Lewis v. Young, Bart.* iii. 1135

HEADLANDS.—See HAY.

1. Prohibition will be granted to a suit for tithe of headlands, but (by some) it ought to be suggested that they are but small headlands, and that there is a custom of discharge in consideration that tithes in kind were paid of meadows. —4 Jac. Scacc. *Anon.* i. 166

2. A prohibition for tithes of headlands fed and cut for plough cattle, granted upon suggestion of special customs in a parish. —10 Car. B. R. *Meade v. Thurman*. i. 383

3. No tithes are due for headlands. —11 Geo. Scacc. *Chapman v. Barlow*. i. 803

4. Tithe of hay is due for grass cut from headlands. —24 Geo. 2. Scacc. *Rice v. Manning*. ii. 1223

HEARTH PENNY.—See MOBVS, Fuel.

HEATH.—See **BROOM**.—See **BARKEN LAND**.

1. Tithes of heaths denied.—12192 *Anon.* i. 402

2. A prohibition was granted to a suit for tithes of heaths, as not titheable.—28 Car. 2. B. R. *Dr. W. at a case* i. 408

3. A prohibition was granted to a suit for tithes of heaths, as not titheable.—28 Car. 2. B. R. *Dr. W. at a case* i. 408

4. A prohibition was granted to a suit for tithes of heaths, as not titheable.—28 Car. 2. B. R. *Dr. W. at a case* i. 408

5. A prohibition was granted to a suit for tithes of heaths, as not titheable.—28 Car. 2. B. R. *Dr. W. at a case* i. 408

6. A prohibition was granted to a suit for tithes of heaths, as not titheable.—28 Car. 2. B. R. *Dr. W. at a case* i. 408

HEMP.—See **PARSON AND VICAR**.

1. Four shillings for each acre of hemp or flax to be paid.—3 W. & M. c. 3. iv. 188

2. Not to extend to any lands discharged.

3. Five shillings to be paid for each acre of hemp or flax.—11 & 12 W. 3. c. 16. iv. 193

Continued for seven years 6 Ann. c. 28. and made perpetual 1 Geo. 1. stat. 2. c. 26. § 2.

4. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

5. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

6. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

7. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

8. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

9. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

10. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

11. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

12. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

13. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

14. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

15. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

16. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

17. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

18. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

19. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

20. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

21. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

22. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

23. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

24. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

25. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

26. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

27. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

28. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

29. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

30. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

31. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

32. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

33. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

34. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

35. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

36. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

37. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

38. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

39. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

40. Hemp and fumble, the tenth sheaf, when it was pulled, withered, and threshed; and that the withering and threshing of hemp and fumble was to be considered, deemed, and taken, for and in lieu of the seed—good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

8. Twisden, J. (who lived in Kent) said, that it was a question whether hops should be tithed, by the hill, the pole, or the bushel.—22 Car. 2. B. R. *Crook v. Ridd* i. 481

9. The court of exchequer held, that a custom to pay a tithe of 6s. 8d. an acre to the parson, in lieu of tithes of hops was void; for that hops, being in their nature a small tithe, belong to the vicar.—26 Car. 2. Scacc. *Ridd v. Crook* i. 495

10. The manner of paying the tithe of hops in the parish of Farnham, in the county of Surrey, is that the occupier shall set out every tenth row or hill of hops, without any fraud, as they arise, before the same are gathered, or the binds thereof cut; but the court declared that where there was no such usage, the tithe of hops ought to be paid in kind, viz. the tenth part of the whole after picking.—3 Jac. 2. Scacc. *Chitty v. Reeve* i. 552

11. By usage the parson may have tithe of hops, which is a small tithe.—5 W. & M. B. R. *Wharfon v. Lisle* i. 579

12. A custom to pay 10s. an acre for tithe of hops is bad.—10 W. 3. Scacc. *Ge v. Pearch* i. 632

13. Tithe of hops shall be paid by the bushel or weight when picked. *Quere*, whether this be of common right.—S. C. i. 633

14. A custom that if the parson send a servant to pull some of the hops, he shall have tithes of them, is void for uncertainty; for it does not appear how much ought to be pulled; and besides it is no benefit to the parson, for it puts him to trouble to obtain that which by law he is entitled to without.—11 W. 3. B. R. *Stedman v. Lye* i. 637

15. Hops are small tithes, and belong to the vicar, where he is endowed of them.—2 Ann. Scacc. *Conall v. Conall* i. 654

16. Tithe of hops must, *de jure*, be paid when picked into the bin by measure, and not by bill or pole, &c.—3 Ann. Scacc. *Ge v. Pearch* i. 658

17. Hops are not titheable until they are picked, and the tithes are to be paid by every tenth bushel after the picking.—6 Geo. Scacc. *Bliss v. Chandler* i. 757

18. Hops are titheable after they are plucked from the vines or binds, and not by the tenth pole or hill.—14 Geo. 2. Scacc. *Stacy v. Unwin* i. 684

19. Hops are small tithes, notwithstanding they are planted in great quantities.—25 & 26 Geo. 2. Scacc. *Smith v. Higgins* i. 127

20. Hops ought to be picked and gathered from the stalks or binds, before the tithe is set out.—25 & 26 Geo. 2. Scacc. *Stacy v. Unwin* i. 127

21. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

22. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

23. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

24. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

25. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

26. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

27. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

28. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

29. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

30. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

31. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

32. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

33. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

34. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

35. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

36. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

37. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

38. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

39. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

40. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

41. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

42. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

43. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

44. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

45. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

46. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

47. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

48. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

49. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

50. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

51. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

52. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

53. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

54. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

55. Dividing, separating, and setting out every tenth hill in the hop ground, and severing

the binds of the hop plants in every such tenth hill from the soil, is not the proper method of setting out the tithes of hops.

16. Hops must be picked and gathered from the binds before they are tithed.—26 G. 2. Scacc. *Whitton v. Tyers*. ii. 187

17. Hops are always allowed to have been introduced in modern times, that is modern in respect of long antiquity. They began to be used and propagated in Queen Elizabeth's time, and existed in this kingdom in Philip and Mary's time and before; as appears from the statute in the reign of H. 8. therefore they were here; but here, as tobacco is here, planted for curiosity and in small quantities; but they were in this kingdom to a certain degree before Elizabeth's time, though non-constant how far.—27 & 28 G. 2. Caus. *Chapman v. Smith*. ii. 141

18. By law hops are titheable after they are gathered from the bind; and it seems that a custom to set out the tithe of them by the tenth hill, where the rows are unequal, leaving the binds uncut and the poles standing, cannot be supported; and no usage can vary this rule.—37 G. 3. B. R. & Dom. Proc. *Knight v. Halsey*. ii. 438

HOSPITALLERS.

1. All the Templars' lands given to the prior of the hospital of St. John of Jerusalem.—17 Edm. 2. stat. 3. iv. 6

2. A manor of the prior of St. John of Jerusalem was exempt *tam propriis manibus, &c.* He makes a lease, and the farmer pays; during the term the house is dissolved, and the king grants the reversion; after the lease his patentee shall hold the manor in his own hands, discharged from tithes; but if he lease it, his lessee shall again pay.—10 El. *Statborne's case*. i. 59

3. The corporation of the religion of St. John's in England and Ireland dissolved.

4. The King shall have the manors, lands, &c. lately belonging to the prior and brethren of St. John in England and Ireland.—32 H. 8. c. 24. iv. 56

5. Lands of the Hospitallers given to the King by 32 H. 8. c. 24. are not discharged of tithes either by that act, or 31 H. 8.—2 Jac. B. R. *Cornwallis v. Spurling*. i. 156

6. The court was divided on the point, whether the discharge from tithes possessed by the Hospitallers was continued after the dissolution of that order; all however thought that if it were, it was by 32 H. 8. and not 31 H. 8.—11 Jac. C. B. *Urry v. Boyer*. i. 214

7. Qu. whether the possessions of the prior of St. John's of Jerusalem be freed from the

payment of tithes.—13 Jac. C. B. *The Serjeants' case*. i. 251

8. Lands of the Hospitallers are discharged in the hands of the patentees of the crown, *quandiu propriis manibus excolunt*. Hyde, C. J. held, that the discharge was by 32 H. 8. and not by 31. Dodderidge and Jones held, that they were discharged by 31 H. 8. but if not, yet they were so by 32 H. 8. Whitlock, contra.—1 Car. B. R. *Whitton v. Weston*. ii. 310

9. Lands of the Hospitallers may be discharged by prescription, under 31 H. 8. As evidence of a discharge by prescription, non-payment not only in the hands of the owners of the inheritance, but of the King's farmers, and their undertenants, was proved; and the prescription may be found for the King, his farmers and tenants; for a bull to be discharged *quandiu manibus propriis* does not take away any prescription that was at common law before. So of Cistercians, if it appears that their lands never paid tithes when in tenants' hands.—25 Car. 2. B. R. *Foster v. Franklin*. i. 601

10. Prohibition was granted upon suggestion that the lands were part of the possession of St. John of Jerusalem, and so discharged by 32 H. 8.—32 Car. 2. Scacc. *Star v. Elliot*. i. 519

11. An exemption of a manor, as being parcel of the possessions of the priors of St. John of Jerusalem (no tithes in kind having ever been paid), was held good.—11 Geo. Scacc. *Hanson v. Fielding*. i. 312

12. The privileged orders were capable, like every other religious order, of having their lands discharged of tithes by a real composition; or by prescription.

The lessee under the crown's grantee, of lands which had belonged to the knights of St. John of Jerusalem, and his under-tenant, may defend themselves against a demand of tithes, just as they might have done, if their lands had belonged to an order not privileged.

In making out a defence, grounded on an alleged discharge in the hands of the Hospitallers by prescription, it is not necessary to shew possession by them at the time of memory; usage of non-payment, not, in the absence of all conflicting evidence, to be accounted for, except upon the hypothesis of such a discharge, constitutes a *prima facie* case of prescription.—5 G. 4. Scacc. *Donnison v. Elsley*. iii. 1395

HOTHOUSE PLANTS.

1. Seemle, that tithes are due for exotic, pines, and other hothouse plants, but that some allowance ought to be made for the great expense of culture.—21 G. 3. Scacc. *Adams v. Waller*. iii. 1292

2. A bill for tithes of pines and other exotics, produced or perfected in hothouses and green-houses, dismissed, without costs.—42 Geo. 3. Scacc. *Worrall v. Miller*. iii. 1985

HOUSES.—See LONDON.

1. By the common law, no tithes are payable for houses.—24 Ed. B. R. *Green v. Piper*. i. 105

2. Accidental payment of two shillings in the pound of the rent of houses within the precinct of St. Martin le Grand by way of tithes, is good, and may be recovered in the spiritual court.—1 Jan. C. B. *Dru Grand's case*. i. 222

3. The person of St. Clement's libelled for 2s. in every 20s. rent paid for the houses. In prohibition, Coke thought such a custom might be good, for perhaps this tithes rent was paid for the ground before the houses were built; afterwards in C. B. they were ordered to decede upon the prohibition, which was granted, and then passed to judgment.—12 Jac. B. R. *Whitaker v. Seyfield*. i. 222

4. No tithes are due for houses, but by custom, if any be, due they may be recovered in spiritual court.—24 Jac. B. R. *Anon.* i. 224

5. Tithes of houses in Southwark decreed, though no custom or prescription was alleged.—8 Geo. Scacc. *Pocock v. Titmarsh*. ii. 176

6. Tithes may be payable by custom for houses and other buildings.—14 G. 3. Scacc. *Kynaston v. Piercy*. ii. 289

HUNDRED.—See DISCHARGE.—MILLS.—WOOD.

IMPROPRIATION & IMPROPRIATOR.
See GRANT.—See PARSON & VICAR.—PRESUMPTION.

1. Owners of impropriations, tithes, &c. empowered to annex the same to the parsonages and vicarages where the same lie and arise without license of mortmain.—17 Car. 2. c. 3. § 7. i. 175

2. Appropriations were said (*arguendo*) to be those things which were so called when in the hands of those to whom they were appropriated: but since the statute, and they have come into lay hands, are called impropriations. Improprators are liable to sequestration for non-repair of the church, for it was a charge originally inherent in the tithes, and an *onus reale* that shall go along with them.—29 Car. 2. C. B. *Walwin v. Aubrey*. i. 513

3. Augmentation of endowments upon the renewing of leases of rectories, or tithes impropriate confirmed and established; not extending one moiety of the value thereof.—29 Car. 2. c. 3. § 5.—10 Geo. 3. c. 37. § 1. i. 186

4. Augmentation leases to be fully entered in a book of parchment, to be kept by respective registers, with entry to be a record and evidence at law.—§ 41. These leases without express continuance of the augmentations to be void.—§ 18. i. 186

5. Improprator of the stall tithes bound to maintain a priest, where no vicarage endowment; and in such case the King may assign to the curate such proportion of the stall tithes as he thinks fit. Otherwise where there is an endowment, though never so small.—26 Car. 2. Cane. *Bonney v. Let*. i. 548

6. Though one cannot prescribe in *non-ali-mando*, yet, against a lay improprator, the court will presume no tithes having ever been paid, that they were granted to the tenant, and look upon them as tithes.—8 W. 3. Scacc. *Mattley v. Fulmer*. ii. 600

7. A rectory which belonged to a dissolved abbey was granted by the crown; afterwards a person was presented by the crown, who sued for tithes, bill dismissed.—1 Geo. Scacc. & Dom. Proc. *Turner v. Smith*. i. 712

8. Quere, whether there be any difference between a lay and a spiritual person as to the title to be set forth in claiming tithes.—9 Geo. Scacc. *Burwell v. Coster*. i. 180

9. A demurrer to a bill by the tithes of a lay improprator, who was not rectory on the ground that it did not set forth how his lessor became entitled to the tithes demanded by the bill, whether by grant, prescription or otherwise, was over-ruled; and the order confirmed upon appeal to the House of Lords; for setting forth the title is but matter of form, and could have no influence on the merits of the cause, or prejudice the defendant in his right to the tithes, if he had such right, or to any discharge or exemption from the payment of them.

10. By the several statutes of dissolution, tithes in the hands of laymen are declared to be temporal inheritances, and lay fees; and they have also the like remedy in the temporal courts, and may sue for them in like manner, as for lands, tenements, and other hereditaments; and tithes have at this day all other incidents belonging to temporal inheritances.—10 Geo. Scacc. & Dom. Proc. *Croft v. Taylor*. i. 790

11. Whether a constant non-payment of tithes is evidence of an exemption against a lay improprator. A dean and chapter is a spiritual and not a lay body.—31 Edw. Scacc. *Foster and others Lessees of Dean and Chapter of Christ Church*. i. 200

12. Defendant not denying the plaintiff's title, as impropiator, to tithes lay, but setting up an exemption, must prove it.—3 & 4 Geo. 2. Scacc. *Benson v. Olive*. ii. 24

13. On a bill by a lay impropiator for tithes, proof that thirty-four years before, the tithes were reputed to belong to persons under whom he claimed, held sufficient; but if he had set out in his bill a title under the crown, he must have proved it.—4 Geo. 2. Scacc. *Leigh v. Muddley*. ii. 25

14. There can be no prescription in *non decimando* against a lay rector, any more than against a spiritual rector; but a distinction was made between one who set up a title to the rectory, and one who entitled himself only to the tithes, or any species of tithes within a parish; for in this last case, the plaintiff shall be held to strict proof, not only of his title, but also of the perception of all the tithes he sets up a title to.—6 Geo. Scacc. *Lady Charlton v. Sir B. Charlton*. ii. 88

15. There can be no prescription in *non decimando*, even against a lay impropiator.—12 Geo. 2. Scacc. *Corp of Bury v. Beaus*. ii. 72

16. An impropiator, whether ecclesiastical or lay, is entitled to all tithes of common right, and is not put to prove his title; but the persons claiming against him must shew their right by deed. A parson claiming against the impropiator may however prove his title by ancient receipt and perception of tithes, which shall be received as sufficient evidence of an endowment. The parson of one parish may be endowed with tithes of another.—15 & 16 Geo. 2. Canc. *Ward v. Hewell*. ii. 88

17. Said, that a layman cannot prescribe in *non decimando*, even against a lay impropiator.—17 Geo. 2. Scacc. *Fanshaw v. More*. ii. 92

18. A rector has, and so has a lay impropiator, a right to all the tithes in the parish, and has nothing to do but to prove himself rector; it is otherwise with regard to a vicar, for he must shew an actual endowment, or evidence of the usage.—20 Geo. 2. Canc. *Carte v. Ball*. ii. 103

19. A lay impropiator is to be sure different from a spiritual in some respects; since the Reformation and the acts for the dissolution of monasteries, tithes by grants from the crown are become lay fees; so that in fact lay impropiators have as much power to convey a portion of tithes as any part of the land itself; and therefore it was said, it is hard the plaintiff should not in this case have the same advantage of presumptive evidence from long possession in the case of tithes, as well as in any other case relating to an estate of inheritance; and it was a saying of Lord Justice HAUM, he would presume even an act of parliament made in favour of length of possession: but the court of

exchequer, in the case of *The Aldermen of Bury v. Evans*, would not lay down a different rule as to prescribing in *non decimando* in regard to lay impropiators and spiritual persons; but held such a prescription equally bad against both.—21 Geo. 2. Canc. *Rotherham v. Fensholt*. ii. 111

20. There can be no prescription in *non decimando* by a layman, even against a lay impropiator.

21. Length of possession, fines levied, and recoveries suffered, will not bar the right of the impropiator.—26 Geo. 2. Scacc. *Jennings v. Lettis*. ii. 129

22. There can be no prescription in *non decimando*, even against a lay impropiator.

23. At common law, no man could avail himself of a discharge from tithes by grant, without producing it.

24. The statute H. 8. is silent as to the manner in which a person must make out his right to tithes against the church, or person standing in the place of the church, and only provides for the assurance and recovery of them, like temporal possessions, in the king's court.

25. Where the defendant, and those under whom he claimed, had been upwards of 130 years in the possession of the tithes, it was held that he need not actually produce the deed of severance; but that it was sufficient to prove that such a deed had existed; and the bill of the impropiator for tithes was dismissed.

26. Possession is so strong a title, that a judge may have emphatically said, he would presume an act of parliament to support and confirm it. Possession is a title to recover upon, and *prima facie* evidences the mere right. But not in this *anomalous* case of tithes; for there is evidence no right, though it should be *ultra memoriam hominis quiesca et pacifica*. Where possession evidences a right, there may be reason to presume somewhat to answer a stale and latent title; but where possession does not evidence a right, there seems to be no ground for such a presumption; because that would be to presume a title.—32 Geo. 2. Canc. *Fanshaw v. Rotherham*. A ii. 158

27. Though there can be no prescription in *non decimando*, yet if land has been constantly ploughed, and has never paid tithes, it will be open to presumption of a grant.—9 Geo. 3. B. *Lord Mansfield v. Clarke*. ii. 233

28. Where a defendant claims a portion of tithes, and supports that claim by evidence of long possession, a court of equity will not interpose, but leave the plaintiff to his legal remedy.—19 Geo. 3. Scacc. *Scott v. Mistry*. ii. 342

29. Bill to establish the rector's right to tithes, and for an account; the defence though informally stated as a prescription *de non decimando*.

mando in a quo retate; was, as two-thirds, possession by the lord of the manor under an apparent title by various conveyances, &c. stated by the answer, from 37 Hen. 8: of the lands, with tithes generally, or two-thirds specifically, with evidence of reputation and notice to the plaintiff, who had purchased the advowson and was lessee of the tithes; but the commencement of the title did not appear; the bill was dismissed with costs.—35 Geo. 3. Canc. *Strutt v. Baker*. iii. 421

30. *MARDONALD C. B.* The plaintiff having made out a clear title to himself as rector, the defendant insists on exemption from payment of hay and agistment tithe, on the ground of having never paid these tithes; from non-payment he wishes the court to presume a grant or conveyance of these tithes from the lay impropriator. It is clear that, against an ecclesiastical rector, this defence could never be set up in any shape: whether a lay impropriator should have the same benefit was at first doubted, but that point seems now at rest. Three successive decisions upon it have fully established that there is no difference between a lay and an ecclesiastical rector.—36 Geo. 3. Scacc. *Nagle v. Edwards*. ii. 427

31. Immemorial non-payment of any tithes from a district cannot raise a presumption of an exemption by grant from the lay rector; but is strong evidence to explain the extent of the grant of the rectory, if at all doubtful.—37 Geo. 3. Scacc. *Lord Petre v. Blencoe*. ii. 467

32. Upon a late decision of the court of exchequer, that a presumption from non-payment of tithes cannot bar even a lay impropriator, the Lord Chancellor, though holding the contrary opinion, would not compel a purchaser to take such a title: and dismissed the bill against him for a specific performance.—40 Geo. 3. Canc. *Ross v. Calland*. ii. 485

33. To a bill for tithes, even by a lay impropriator, prescription in *non decimando*, or prescription from mere retainer, without colour of title, is no defence, and will not be sent to law.—50 Geo. 3. Canc. *Berney v. Harvey*. ii. 585

34. A rector is not entitled to an issue where the defendant sets up a grant of a portion; and constant non-payment of tithes, which defence is not impeached by the plaintiff.—51 Geo. 3. Scacc. *Barker v. Baker*. ii. 647

35. To a bill by an impropriate rector for an account of tithes, the occupier pleaded a title to the tithes in his landlord, and traced the title of his landlord, and those under whom he claimed, to the tithes, by retainer, for upwards of a century, but did not shew the origin of the title; the plea was over-ruled.

36. A prescription in *non decimando* cannot be set up against either a spiritual or a lay rector. 56 Geo. 3. Canc. *Heathcote v. Aldridge*. iii. 728

37. A grant of the tithes of land will not be presumed from non-payment, although the lands be shewn to have been once in the possession of a former lay impropriator, unless some evidence of the existence of a grant be offered, or enjoyment of the tithes be shewn by at least something like actual pernancy; or a dealing with the tithes as owner. Nor will evidence of retainer only be sufficiently strengthened to support such a presumption, by its being shewn that a former impropriator had declared the lands in question to be exempt from the payment of tithes, or by instances of exaction of the tithes in leases, by the impropriate rector.

38. A church being void and dilapidated is no ground of discharge from payment of small tithes to the impropriate rector, on the notion of an agreement having been entered into between the rector and the parishioners, by which the ecclesiastical duties have been dispensed with in consideration of an abandonment of the small tithes.—56 Geo. 3. Scacc. *Mead v. Nonbury*. iii. 746

39. Where a defendant in a suit for tithes by a rector makes out a clear defence as portionist, claiming under successive grantees of the crown, of the possessions of one of the dissolved monasteries, a right to some of the great tithes of the rectory, but neither the rector or the defendant can ascertain and shew specifically what were the tithes which belonged to the rector or to the monastery, the court has no means of assisting either party in availing himself of his title. The court will not decree an account in favour of the rector under such circumstances, where he has never had perception, but they will retain the bill to give him an opportunity of taking an issue, or proceeding by commission, ejectment, or by action on the statute.

40. The *onus probandi* is not on the portionist, if there has been no perception on the part of the rector.—2 Geo. 4. Scacc. *Boulton v. Richards*. iii. 1068

41. At the trial of an issue to ascertain whether one of the defendants, a layman, was intitled to the tithes, or a *modus in lieu* of the tithes, of certain lands, it was proved that a payment described as a tithe or late tithe, issuing out of the lands in question, had been conveyed by the defendant's title deed for the last 150 years, and that this payment had been received by him and his ancestors, and that no tithe had been paid to the plaintiff, the rector, within living memory; and a verdict was found for the defendant. A motion for a new trial by the rector was refused.—4 Geo. 4. Canc. *Williams v. Bacon*. iii. 1105

42. To a bill for tithes by lessees of a spiritual impropriator against occupiers alone, mere non-payment, coupled with evidence of pernancy by the landlord of the premises for a few

years, and of loose reputation of title in him as a portioner, unsupported by any document, does not constitute a defence, and the case will not be sent to law.

43. The title of a portioner must be either proved by shewing the grant under which he claims, or if it has been lost, by that species of evidence which would enable the court to presume that such a grant once existed.

44. The situation of an owner of land claiming title to tithes from it as a portioner, is worse than that of any other person claiming the same title.

45. Whenever a portion of tithes is claimed, actual pendency of those tithes from a long and remote time ought to be proved.—5 Geo. 4. Scacc. *Wolley v. Platt.* iii. 1167

INCLOSURE.—See Common.

1. Where an inclosure act directed part of a waste to be sold, title free, to defray the expenses of the inclosure: and the saving clause was, of all claims except of the lord and of the commoners; it was held, that the right of the rector, though he was not a party to the act, was not saved, the lands being expressly exempted from tithes by the act.—33 Geo. 3. Scacc. *Riddle v. White.* ii. 374

2. Under an act for inclosing lands in the township of A. S. and W. directing the commissioners to allot to the rector of the parish of W. in lieu of the tithes of the townships of S. and W. so much of the lands to be inclosed in the township of S. and of the titheable parts of the township of W. as should, quantity, quality, and situation considered, contain or be equal in value to two-fifteenth parts of the titheable places thereof, and to make to the rector of W. and the vicar of B. in lieu of the tithes of a part of the lands in the townships of S. and A. to which they were entitled, a like allotment, equal to two-fifteenth parts of such lands, and declaring that after the enrolment of the award of the commissioners, all tithes arising within the lands inclosed should cease, an award by which the commissioners allotted to the rector of W. "in lieu of the tithes of S. and A." lands more in quantity than two-fifteenth parts of the lands inclosed in S. and A. but less than two-fifteenth parts of the lands inclosed in S. A. and W. without any allotment in lieu of the tithes of W. is a bar to the claim of tithes in W. The award would not be vitiated by error in the allotment. The act having directed the commissioners, in estimating the proportion, to have regard to quality and situation, deficiency in quantity is not proof of error.—158. Geo. 3. Canc. *Cooper v. Thorpe.* iii. 903

3. By an inclosure act it was enacted, that

the commissioners should set out, allot, and award certain portions of lands out of the commons to be inclosed, unto the impropriate rector and curate, in lieu of all great and vicarial tithes: and the commissioners were required to distinguish by their award the several allotments to the impropriate rector and curate respectively, and the same allotments were thereby declared to be in full satisfaction and discharge of all tithes: held, under this act, that the tithes were not extinguished until the commissioners made their award.—2 Geo. 4. B.R. *Ellis v. Arnison.* iii. 1066

4. By an inclosure act, the tithes payable in respect of certain old inclosures were extinguished, and in lieu thereof a corn-rent substituted, which was directed to be paid for ever afterwards to the impropriator and vicar, by the person who for the time being should be in the possession or occupation of the land out of which the rent should be issuing; and a power of distress was given for the recovery thereof, the same as is for rent-service or other rent in arrear. For several years, parts of such land remained untenanted and wholly unprofitable to the owner, who, during that time, resided elsewhere. The land was then demised to a tenant who entered and brought it into cultivation:—Held, 1. That during the time the land was untenanted and uncultivated the landlord was in the legal possession thereof within the meaning of the act, so as to subject him to the payment of the corn-rent in arrear; and 2. that the goods of the tenant coming in under him were liable to distress for such rate in arrear.—3 & 4 Geo. 4. B.R. *Newling v. Pearce.* iii. 1094

INDICAVIT.

1. A writ of *indicavit* shall not be granted to any before issue joined between the parties in court-christian, and the chancellor shall be certified thereof by inspection of the libel.—Stat. 34 Edw. 1. ix. 5

2. *Indicavit* will lie by the equity of the statute for a fourth part of the tithes and offerings, though only tithes are expressly mentioned.—38 E. 3. *The King v. the Prior of John's.* i. 20

3. It was said by Moulton, that at common law, if the parson had been impleaded concerning his tithes, the patron had no remedy; but that by stat. Westm. 2. the parson shall have an *indicavit*, and the patron a writ of *right of advowson* for the fourth part of the tithes, and this writ was given by the statute; but *MARKHAM* said it was not so, for at common law the prohibition laid to a plea for any part of tithes, and thereupon a writ of *right* by the patron, but by stat. Westm. 2. no *indicavit* shall be granted but for the fourth part at least, for to have

a writ of right for the twentieth or fortieth part was mischievous, and therefore that statute was made. *Forrester* said, that at common law there was a writ of right to render the advowson of the tithes of five acres of land, or one acre of land, and so forth, and therefore the statute was made.—38 Hen. 6. i. 399

INDUCTION.—See **RECTOR**—**INSTITUTION**.

INNKEEPER.—See **PROHIBITION**.

INSOLVENT ACT.

1. The profits of an ecclesiastical benefice do not pass to the assignees under an insolvent act, though included in the schedule of the insolvent.—43 Geo. 3. C.B. *Arbuckle, Assignee of Poole v. Cowtan*. ii. 507

INSTITUTION.

1. *Quære*, Whether institution into what has been falsely alleged to be a sinecure, shall vacate the institution and induction to a second living, above 8l. in value.—12 W. 3. Scacc. *Pugh v. Pascoe*. i. 687

2. A parson cannot sue for tithes after institution and before induction, for they are temporal; though he is entitled to oblations, &c. which are spiritual.—4 Ann. Scacc. *Anon.* i. 670

3. Proof of admission, institution, and induction, and reading the articles, not required in equity.—4 Geo. Scacc. *Woodcock v. Smith*. i. 738

INTRUSION.—See **SEVERANCE**.

JOINT TENANTS.

1. A suit by one of two joint tenants is no cause for prohibition.—15 Car. B. R. *Anon.* i. 398

2. No prohibition shall be granted to one of two joint tenants of a rectory, for though our law will not allow it, yet perhaps the spiritual court will.—15 Car. B. R. *Anon.* i. 398

ISSUE.—See **TITHES**—**CHANCERY**—**EXCHEQUER**.

1. On an issue by a court of law to try a right, the judge may, without a special order, indorse on the postea a different right to that laid in the declaration, if the jury find such a right.—21 Geo. 3. B. R. *Franklin v. Holmes*. i. 1807

JURISDICTION.—See **SPIRITUAL COURT**—**TITHES**, *Common Law*.

JURY.

1. In a question between the farmer of an impropriator and a parishioner, for tithes, any impropriator returned upon the jury, was ordered by the court to be a just cause of challenge.—9 W. 3. Scacc. *Pearson v. Hoskerton*. i. 626

JUSTICES.

1. The court inclined strongly that an action of debt for tithes, on 2 Edw. 6. would not lie by justices; but they directed a writ of "false judgment" rather than grant a prohibition, although they agreed that it might go both before and after judgment; and that the jurisdiction of the sheriff's court might well enough be examined in a prohibition.—20 Car. 2. B. R. *Bishop v. Corbet*. i. 477

KING, and See **EXTRA PAROCHIAL TITHES**—**MINES**.

1. The king granted tithes of hay and mills in all his demesnes in the kingdom.—11 H. 3. i. 2

2. The tithes of the fourth part of all victuals spent by the king in his house while he held the earldom of Chester in his hand, and that all succeeding ears should be chargeable with the same.—31 H. 3. i. 3.

3. Extra parochial tithes granted by the king in the forest of Inglewood.—18 Edw. 1. i. 4

4. Tithes of the Stannary in Cornwall paid to the Bishop of Exeter by the king.—38 Edw. 1. i. 6

5. The king directs tithes to be paid of his mills in Holderness as they are paid of other mills in those parts.—1 Rot. Parl. i. 8

6. Prohibition to a suit in court-christian, upon suggestion that the lands were demesnes of the gift of the king, and an inquisition directed returnable in chancery.—8 Edw. 2. i. 9

7. Petition to the king for tithes of his land, and an inquisition directed returnable before the king.—8 Edw. 2. i. 9

8. A petition to the king for tithes of all colts of the king's stud in the manor and park of Woodstock, answered by his council.—8 Edw. 2. i. 9

9. A petition to the king for tithe of colts in his park of Beylegh, and an inquisition directed.—8 & 9 Edw. 2. i. 10

10. A petition of the prior and convent of Brecknock, for tithes due by the king's keepers of certain lands and castles.—15 & 16 Edw. 2. i. 10

11. A petition for tithes of foals in Hatfield Broad Oak Park, ordered by the king to be referred to the court of chancery to inquire whether the park was within the bounds of the parish, and what tithes had been paid, &c.—19 Edw. 2. i. 11

12. Tithe of underwood sold by the king's keeper of the forest of Bermwood, ordered to be paid by the keeper.—4 Edw. 3. i. 13

13. License granted by the king as patron of the advowson of Rye to the rector to sue fishermen of the parish for the tithes of their fisheries.—8 Edw. 3. i. 15

14. A petition of the abbess of Godstowe for tithe of venison in the forest of Whittlewood, alleged to have been granted by the king's ancestors, and an inquisition directed returnable in chancery.—Edw. 3. i. 15

15. An inquisition directed returnable in chancery on the petition of the abbot and convent of L. persons of the church of H. claiming to be entitled from time, &c. to agist certain cattle in the park and woods of H. in lieu of the tithe of herbage, and to feed pigs in the same woods free from pannage in lieu of the tithe of pannage, and to a kind of eels in lieu of the tithes of certain fisheries; the manor of H. having come to the hands of the king, and having been granted by him to the queen.—21 Edw. 3. i. 15

16. The exchequer took consuance of tithes in case of the king or his farmer, though neither K.B. or C.P. would.—38 Edw. 3. i. 17

17. Prohibition, on suggestion that the lands of which tithe-wood was demanded, were holden of the queen in capite: *scire facias* to shew cause why a consultation should not be granted.—21 El. Case *Merrick v. Wolfe*. iii. 1197

18. It was said by *Maxwood*, C. B. that whereas the Cisterians, &c. had a privilege, that they should not pay tithes for their lands, *quas propriis manibus excolunt*, but their farmers should pay tithes: and now by the stat. of 31

H. 8. they are discharged, that the suggested her farmers should be discharged of such tithes as the spiritual persons were, for the queen cannot excolere; ergo, her farmers shall be discharged: and, so long as the queen has the freehold, her farmers shall have some privilege although she leases for years, or at will: but if the queen grants over the reversion, then the farmers shall pay tithes.—22 El. *Sacco*. *Caseless of Lennor's case*. i. 110

19. *Quere*, Whether a prohibition will lie to the spiritual court for suing for tithes of lands holden of the crown in capite, and to rectors

20. In some cases, a man shall have a prohibition when he is sued in the spiritual court for tithes of his lands. As if a man be the king's tenant, and holds of him in chief by knight's service, and is sued in the spiritual court for the tithes of the demesne lands he shall have a prohibition because these lands may come into the king's hands by reason of marriage, or by escheat; and then, perhaps, the king shall be otherwise charged than he ought to be charged, and therefore the same ought to be tried before the king in his chancery.—37 Edw. 3. *Vaughan v. Beal*. i. 110

21. If the queen were lady of a manor, she might prescribe to have tithes in parrancy, for she is capable of them, although they be spiritual; for she is *mista persona et capax spiritualis jurisdictionis*, and may also prescribe *in rebus censualibus*.—40 El. B. R. *Piggot v. Meron*. i. 156

22. The king shall not pay tithes of the demesnes of a monastery in his hands, unless the monastery used to pay tithes. i. 157

23. His tenant for life, or years, or in capite, shall pay tithes but not tenant at will.—44 El. *Scacc. Anon*. i. 157

24. In the king's forests, cattle are taken by the king's officers to agist them; and they are accountable for this agistment, that is a pun for feeding cattle there. And it is called agistment because the cattle are suffered agist, that is, to be levant and couchant there.—3 Jac. *Case Scacc. Anon*. i. 164

25. If a copyholder of the king's manor pretend prescription for a *modus decimandi* against the parson, the right of tithes shall be tried in the exchequer, and a prohibition was granted to the ecclesiastical court in this case.—7 Jac. *Scacc. Anon*. i. 164

26. A suit for tithes between parson and vicar, where the king is patron, shall be in the exchequer, by English bill, or by action in the office of pleas, for it is apparent that the king is supreme ordinary.—9 Jac. *Sacco*. *Anon*. i. 164

27. The king was seized *jure coronæ* of certain lands parcel of the forest of Bute, which he and all his predecessors had held discharged of payment of tithes, it was doubted whether such

a privilege attached to the patentee.—5 Car. B. R. *Morant v. Cumming*. i. 359

38. It is said that the privilege of the king to hold a forest discharged of tithes was personal and extended to his lessee only, and not to his feelee.—5 Car. C. B. *Comins' case*. i. 360

39. Privilege to sue in the exchequer at the king's lease, disallowed, because the rectory was fee-farm rent, under which the privilege was claimed, were entirely out of the king.

40. The court would not determine whether tithes of houses in London could be sued for in this court by a privileged person.—4 Car. Scacc. *The Purse of Dr. Batolph's case*. i. 368

41. The king being *persona mixta* may prescribe in *non decimando*, but such a privilege is personal, *de non agitur personam*; therefore where a forest had been discharged of tithes for time immemorial whilst in the hands of the crown, it was held that a grantee should not have the benefit of the prescription.—11 Car. B. R. *Hargford, Earl of v. Leach*. i. 389

42. Forest lands in the hands of the king do not pay tithes although within a parish; but if they be disafforested and within a parish, they ought to pay tithes, for their not paying tithes in the hands of the king is but an immunity for that time only.—34 Car. B. R. *Banister v. Wright*. i. 404

43. The king is not discharged of tithes of the ancient demesnes of the crown by his prerogative, but he is capable of a discharge by prescription as well as a bishop. But if the king alien any of the lands for which he is so discharged, his patentee shall pay tithes; and the prescription shall not revive if the lands should come into his hands again by escheat or otherwise.—14 Car. 2. Scacc. *Compost v.* i. 437

44. The demesne lands of the crown called Byfleet Park, which lie in the parish of Wisley, in the county of Surrey, are tithe fees, although they are now disparked, and converted into arable lands. And a perpetual injunction awarded to quiet the possession of the crown and the tenants and lessees.—2 W. & M. Scacc. *Attorney General v. Oldys*. i. 564

45. Where tithes were claimed of lands within the forest of Dartmoor, by a rector of a parish, and the defendants alleged that they belonged to the king; an issue was directed to try whether the lands laid within the parish.—3 W. & M. Scacc. *Birchinskaw v. Wilcock*. i. 569

46. What the king can prescribe in *non decimando*, the king's tenant or lessee may do so likewise.—5 Geo. 2. Scacc. *Williams v. Foster*. iii. 1237

47. The defendant to a bill for an account and satisfaction of tithes, insisted that the lands occupied by him were ancient demesne lands of

the crown, and had never been alienated or demised from the crown, except for short terms of years, the freehold being always in the crown; and he insisted that the same were exempt from tithes in the hands of the crown, and were in like manner exempt in the hands of an occupier claiming under the crown. But the exemption was disallowed, and the defendant was decreed to pay the tithes.—31 & 32 Geo. 2. Scacc. *Hotham v. Foster*. ii. 156

48. Returns of any particular subject-matter by the auditors in their accounts of the crown revenue, are sufficient proof of its having been kept in charge to protect the claim of the crown from the operation of the *Nullo Tempus* act (9 Geo. 3. c. 16), although they have returned "Nil," and the claim has not been put in suit thereon for more than sixty years.—60 Geo. 3. Scacc. *Attorney General v. Lord Eardley*. iii. 986

KING'S BOOKS.

1. The king's books are conclusive as to the value of a living.—2 W. & M. Scacc. *Stumpe v. Ayliffe*. i. 567

LAMBS.—See Woods.

1. Lambs are small tithes.—16 Jac. B. R. *Britton v. Ward*. i. 298

2. In a libel, the parson alleged a custom that all the lambs of all owners in the parish should be reckoned together, and the tenth lamb paid for tithe; held, that all customs were to be tried at common law, and that such a custom was unreasonable.—18 Jac. C. B. *Barker v. Cocker*. i. 321

3. If a man prescribe to pay 3d. for every lamb which he shall sell before the 1st day of May, without other tithe of them, and after, by fraud, to deceive the parson, he sells the lambs but a day before May, this is not discharged by the custom of tithing.—17 Jac. C. B. *1 Ro. Abr.* 652

4. Lambs are titheable when they can live without the dam, and when the owner weans his own lambs.—32 Car. 2. Scacc. *Croft v. Blake*. i. 527

5. An issue directed to try whether there was a custom to set out tithe lambs on Lammas day.—9 W. 3. Scacc. *Peirson v. Hoskerton*. i. 626

6. Tithe lamb is to be paid where it falls, but by the received canon law, regard is to be had to the place of feeding. One is not bound to pay tithe lamb for any number under ten, because they are entire things, and not divisible as wool is.—13 W. 3. B. R. *Selby v. Bank*. i. 640

7. A custom that in consideration that they

used to pay the tenth lamb of all the lambs dropped in the parish, they used to be discharged of the tithes of all lambs there fed, &c. is bad, and in reality no *modus* at all.

8. The tenth lamb is due to the parson by common right; and though they may make a distribution in the ecclesiastical courts, that is only among the parsons themselves, and does not concern the owner of the land.

9. Lambs are entire, and it is not a prescription in *non decimando* to pay the tenth lamb, because under the tenth, tithes are not due.—13 W. 3. B. R. *Setby v. Clarke*. i. 641

10. Custom that tithe lambs ought to be set out on the 17th of May, the lamb to run on the same ground till the first of August, when twopence is to be paid by the parson, is good.—2 Ann. Scacc. *Ekins v. Bridges*. i. 651

11. A custom to tithe such lambs as are able to subsist without the ewes on St. Mark's day, and the others when able to subsist is good.—2 Ann. Scacc. *Lister v. Fox*. i. 654

12. The first of August and not the first of May is the proper time to set forth tithe-lambs. 8 Geo. Scacc. *Hegton v. Regal*. i. 776

13. A custom to set forth tithe-lambs on St. Mark's day is void, and the time for setting them forth is when they are fit to live without their dams, and when the owner weans his own.—8 Geo. Scacc. *Croft's case*. i. 776

14. The usual time for titling lambs is when they can live without the dam.—9 Geo. Scacc. *Reynolds v. Vincent*. i. 790

15. A custom to deliver and leave bound in the churchyard the tenth lamb, in lieu of the tithes of lambs, first giving notice at the house of the vicar, established.—11 Geo. Scacc. *Gould v. Pearce*. i. 806

16. Where there is an odd number above ten lambs, &c. it is not to be carried over to the next year, but the tithe shall be paid according to the value.—11 Geo. Scacc. *Egerton v. Still*. i. 818

17. Lambs, in their kind, to be delivered the 1st day of May; and if under seven, to pay for every lamb a halfpenny; and if seven lambs, and under ten, to pay one lamb, and to be allowed for every lamb that wanted of the ten, a halfpenny; and so likewise for any odd number of lambs; and that tithe of lambs was to be paid in kind, as well those that fell after as those that fell before the 1st of May, respect being always had to the number of lambs, according, and pursuant to the above prescription or modes, save that those that fell after May day were to be kept by the owner until a month old, and if longer he was to be paid for keeping; and so of lambs that fell within a month before May-day, which were to be kept by the owner until a month old, and if longer, he was to be paid for keeping, bad, because

unintelligibly bad, and binding the parson to pay for keeping the tithe animal beyond a month old. The farmer is in general bound to keep it till it be able to live without the mother; but an established custom may vary the rule.—58 Geo. 3. Scacc. *Jackson v. Royton*. ii. 896

18. *Seemle*, that a custom to tithe lambs on St. Mark's day is unreasonable, lambs being dropped from Christmas to near Midsummer, and being unable to live without the dam until ten weeks old: the reasonableness or unreasonableness of the custom is, however, a question of fact for a jury.—16 Geo. 3. Scacc. *Bedford v. Sambell*. iii. 1247

19. A custom that the land-owner should take the two best out of every ten lambs, and the tithe-owner the next best, held bad.—58 Geo. 3. Scacc. *Hall v. Malby*. iii. 928

20. The right of a parson to the tithes of lambs accrues when they are dropped, although the tithe cannot be set out or taken until they have arrived at a proper age to be weaned.—59 Geo. 3. C. B. *Welch v. Uppill*. iii. 963

LATERAN COUNCIL.

1. Before the council of Lateran, it was lawful for every one to distribute and pay his tithes as he chose, or any portion thereof to any church according to his best devotion.—7 Edw. 6. The Dean and Chapter of *Bristol*, or the *Sergeants' case*. i. 151

2. The question was, whether tithes might be demised by copy of court roll &c. By *Edw. deridge*, they cannot; for although tithes have been immemorially to be paid, yet one parson could not claim more than another until the council of Lateran; and so their origin as to this church was by constitution and not by custom.—43 El. B. R. *Saunders v. Drury*. i. 150

3. It was said by the court that the council of Lateran, which discharged the *Cistercians* was held 17 John, and only discharged the possessions then in their hands and no others.—18 Jac. C. B. *Anon.* i. 321

LATTERMATH.—See AFTERMATH.—HARD

LEAD ORE.—See ORE.—HARD

LEASE.—See TITHES, how they pass.

AGREEMENT.

1. A declaration in debt for tithes leased was held to be bad, as the plaintiff had conveyed no interest to himself, inasmuch as he was not parson, nor had shewn that the parson leased

to him, and he leased over; but the declaration was allowed to be amended. To an exception that no lease by deed was shewn, nothing was said by the court.—10 Hen. 7. i. 49

2. A lease of a rectory for a term of years without deed was held to be good, and that by such lease the tithes and offerings pass as incident thereto, although there was no parsonage house but only a church and churchyard. *Bro. adds*, yet it seems tithes or offerings only cannot be leased without deed, no more than a rent. Ejectment lies if the lessee be ousted of the offerings, &c.—16 Hen. 7. i. 50

3. In debt for arrears upon lease of a parsonage, after verdict it was moved in arrest of judgment, that the lease was made without deed; but the court held that every parsonage should be intended to have glebe, and so consisting in a manner part in demesne and part in services, by lease of the parsonage, all that makes the parsonage passes without deed.—16 Hen. 7. i. 50

4. A parsonage which consists wholly of tithes and oblations, and which therefore lies in grant, cannot pass without deed. By *Rede*, J. 20 Hen. 7. i. 50

5. The court held that the church, the churchyard, and the tithes make the rectory, and that the whole would pass by parol under the name of rectory; but they were of opinion that the parson could not lease the tithes only, without deed.—21 Hen. 7. i. 50

6. All leases, gifts, grants, feoffments, conveyances or estates, to be made, had, done, or suffered by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, or any houses, lands, tithes, &c. (other than for the term of one and twenty years, or three lives, from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved, and payable yearly during the said term,) shall be utterly void and of none effect.—13 El. ch. 10. § 3. iv. 90

7. No lease to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, and not being impropriated, shall endure any longer than while the lessor shall be ordinarily resident, and serving the cure of such benefice without absence above four-score days in any one year, but that every such lease, immediately upon such absence, shall cease and be void; and the incumbent so offending, shall for the same lose one year's profit of his said benefice, to be distributed by the ordinary, among the poor of the parish.—13 El. c. 20. iv. 90

8. Sequestration shall be granted by the

ordinary of a benefice demised contrary to the provisions of 13 El. c. 20. and in default of the ordinary the parishioners may retain these tithes.—18 El. c. 11. § 7. iv. 92

9. A grant by a parson to one to hold his land discharged of tithes without deed, is not good as a lease of his tithes, but if the parson sue against such grant, an action on the case lies.—28 El. B. R. *Walloch's case*. 1599. i. 89

10. It was said there are divers precedents, that if a lessee for years be sued in court christian for tithes, he in the reversion may have a prohibition.—29 El. B. R. *Lane v. Pigot*. i. 91

11. Leases of benefices for twenty-one years shall be void, not only by non-residence for eighty days, under 13 El. c. 10. but by death or resignation of the incumbent.—31 El. B. R. *Mott v. Hales*. i. 97

12. A bishop by indenture let a portion of tithes for three lives at the ancient rate, and died: his successor accepted the rent, but afterwards made a new lease; held that the first lease was void; for the rent having been reserved upon a lease of tithes for life, there was no remedy for it by distress or assise, and that it was not made good by the acceptance of rent by the successor, for by the statute it was merely void against him.—8 Jac. B. R. *Rickman v. Garth*. 1607. i. 107

13. A lease of tithes for life, being a freehold, cannot commence in futuro.—6 Jac. B. R. *Edmonds v. Booth*. 1607. i. 178

14. *Quare*, Whether rent may be reserved on a lease of a portion of tithes.—17 Jac. B. R. *Ensdon v. Denny*. 1623. i. 309

15. A parson leased his rectory for 60 years, which was confirmed by the succeeding bishop and patron, and held good.—2 Car. C. B. Sir R. Banister's case. 1627. i. 355

16. If tithes be leased by deed, debt lies for the rent, but if without deed, *assumpsit*.—6 Car. C. B. *Watrish v. Cropton*. i. 373

17. *Qu.* Whether rent reserved on a lease of tithes only, runs with the tithes to the assignee, or lies only in privity of contract, so that the assignee is not chargeable with it, and consequently whether by acceptance of such rent from the assignee, the first lessee be discharged from the rent in future or not.—23 Car. 2. B. R. *The Dean & Ch. of Windsor v. Gower*. 1647. i. 487

18. Where a bill has been filed for an account against one who claimed a lease of the tithes, and the whole question turned upon the validity of the lease, and of the notice given to determine it, the court would not proceed till those points were settled at law.—34 Geo. 3. Scacc. *Bousher v. Morgan*. 1793. iii. 408

19. Lessee of tithes agreed with the owner of lands, for certain collateral considerations,

not to take tithes in kind from the tenants of the lands for twelve years, but to accept a reasonable composition not exceeding 3s. 6d. per acre; and thereto bound himself and his assigns. His under-lessee sued (in the name of a trustee to whom he had nominally again under-leased) for tithes in kind against the tenant of the land, and had a decree. Such an agreement is void for the uncertainty of the sum to be paid. The lessee of the land cannot claim to hold discharged of tithes under any covenant with his lessor. An under-lessee is not an assign within the meaning of the covenant; nor can the tithes be bound by such a covenant of the lessee.

20. A lease of tithes, or other matter which lies in grant, for all the time the lessor should continue vicar, is good, and conveys a freehold.—34 Geo. 3. Scacc. *Brüwer v. Hill.* ii. 410

21. An act to confirm all leases already made by Archbishops and Bishops and other ecclesiastical persons, of tithes and other incorporeal hereditaments for one, two or three life or lives, or 21 years; and to enable them to grant such leases, and to bring actions of debt for recovery of rents reserved and in arrear on leases for life or lives.—5 Geo. 3. c. 7. iv. 216

22. Leases granted by ecclesiastical persons of incorporeal hereditaments for life or years declared to be good, and action of debt may be brought for rents in arrear.—§ 3.

23. An act for explaining and amending 32 H. 8. 1. 13 & 14 El. so far as respects leases granted by Archbishops, &c. 39 & 40 Geo. 3. c. 41. iv. 232

24. Several rents reserved on separate demises of specific parts to be taken to be ancient rents.

25. The right of a lessee by parol of tithes is but an indirect title in equity through the tithe owner, as being binding on his conscience. The lessee has no direct right against the occupier, between whom and him there is no privity; and can only derive from the lease an equitable right to sue in the name of the person having the legal title to the tithe, which a court of equity would compel the tithe owner to permit him to use; and therefore his releasing the owner of the tithe destroys his interest, and restores his competency as a witness on behalf of such owner.—1 & 2 Geo. 4. Scacc. *Robinson v. Williamson.* iii. 1038

26. Lease for years by a rector having ceased by his death, the succeeding incumbent received from the lessee a sum of money as the rent due for the whole year, in the course of which the lessor died. The executor is entitled to an apportionment; and a demurrer to his bill was overruled.—43 Geo. 3. Canc. *Hawkins v. Kelly.* iii. 1385

LETTERS PATENT.

1. Confirmation of letters patent.—35 El. c. 3. iv. 92
2. Confirmation of letters patent.—43 El. c. 1. iv. 93
3. The spiritual court shall be prohibited, if they will determine upon the validity of letters patent.—10 Jac. B. R. *Anon.* f. 204

LIME.—See DISCHARGE.

1. No tithe shall be paid of lime because it is part of the freehold.—18 Jac. *Thomas v. Perrie.* 1 Ro. Abr. 687
2. By custom tithes shall be paid of a lime kiln, though none are to be paid *de jure* without a custom.—13 Jac. *Thomas v. Perrie.* 1 Ro. Abr. 642

LIMITATION.

1. J. S. demised lands to the rector of D. for forty years at a certain rent; in the lease the rector, after covenanting for payment of the rent, further granted to J. S. the tithe of oats of the parish of D.; the lease also contained a proviso for re-entry in case the rent should be in arrear, or J. S. his heirs, &c. should be disturbed by the rector or his assigns in the receipt of the tithe; and concluded with a covenant on the part of J. S. that the rector should quietly enjoy the lands, under the covenants, grants, and agreements, contained in the lease. After the expiration of the lease, the rectors continued to hold the land, but withheld the rent for more than 20 years, the heirs of J. S. at the same time continuing to take the tithe of oats, and some confusion existing as to the respective rights of the rector and the heirs of J. S., the latter being portionists of the tithes of the parish:—Held, that the possession of the land by the rector was not adverse, so as to let in the operation of the statute of limitations.—42 Geo. 3. C. B. *Doe dem. Pollatt v. Ferrars.* ii. 494
2. No action shall be brought for the recovery of any penalty for the not setting out tithes, nor any suit instituted in any court of equity, or in any ecclesiastical court, to recover the value of any tithes, unless such action shall be brought or such suit commenced within six years from the time when such tithes became due.—53 Geo. 3. c. 127. § 5. iv. 256

LONDON.—See HOUSES.—See KING.

1. In many places in London a man shall have no tithes but offerings.—38 Edw. 3. c. 1. i. 20
2. The stat. 27 H. 8. c. 120. nor anything

therein contained, shall not extend to any inhabitant of the city of London, for or concerning any manner of tithe, offering, or other ecclesiastical duty, grown and due, to be paid or yielded within the same city, because there is another order made for the payment of tithes and other duties within the said city.—27 H. 8. c. 20. iv. 29

3. The 32 H. 8. c. 7. or any thing therein contained, shall not in anywise bind the inhabitants of the city of London, and suburbs of the same, for to pay their tithes and offerings within the same city and suburbs otherwise than they ought or should have done before the making of this act; any thing in this act contained to the contrary notwithstanding.—32 H. 8. c. 7. § 6. iv. 51

4. An act for tithes in London.—37 Hen. 8. c. 12. iv. 69

5. This act, or any thing therein contained, shall not extend in anywise to the inhabitants of the cities of London and Canterbury, and the suburbs of the same, nor to any other town or place that has used to pay their tithes by their houses, otherwise than they ought or should have done before the making of this act; any thing contained in this act to the contrary in anywise notwithstanding.—2 & 3 Edw. 6. c. 13. § 12. iv. 88

6. Houses in London, though part of the possessions of one of the greater abbeyes, shall pay tithes by 37 H. 8. 2. for no houses are excepted in that stat. but those of noblemen.—34 El. B. R. *Green v. Piper*. i. 105

7. A reservation by lessee for life, in London, who leases for years to A. is not sufficient to bind him in the reversion, to pay tithes according to that rate.

8. A rent for half a year and then for another half year, is a yearly rent within the meaning of the decree. And as the same was last let, is not intended last before the decree, but before the demand of tithes.—5 Jac. B. R. *Meadhouse v. Taylor*. i. 172

9. Where a house in the city of London was let at the yearly rent of 5*l.* being the accustomed rent reserved at the time of the decree in 37 H. 8; but over and beyond the accustomed rent, a further yearly sum, in the nature of a fine, was reserved and made payable at the same time with the rent; it was holden that tithe was only payable according to the accustomed rent, at the time of the decree, without reference to the amount of the yearly fine or income.

10. The case of a house being inhabited by the owner and not letten, held to be *casus omissus* in the decree.

11. Tithes of houses in London cannot be sued for in the spiritual court, the act and decree having appointed a special jurisdiction, viz. the Lord Mayor, and in his default, the

Lord Chancellor.—M. 5 Jac. C. B. *Skidmore v. Bell*. iii. 1202

12. Prohibition granted, where the libel was for tithes of a house in London, for the mayor has jurisdiction.—14 Jac. B. R. *Anon.* i. 259

13. The ancient rent was reserved upon a house in London, and also a further sum by way of fine and income. *Quare*, whether tithes should be payable under the decree of 37 H. 8. according to the ancient rent only, or according to the ancient rent and the sum reserved by way of fine and income also? It was, however, agreed by the Lord Chancellor and the other assistants, that the sum reserved by way of fine and income was not a rent.—15 Jac. Canc. *Dunn v. Burrell & Goffe*. i. 270

14. Plea to the jurisdiction of the court of exchequer of the tithes of houses in London over-ruled.—16 Jac. Scacc. *Itatt v. Warren*. iii. 1203

15. *Quare*, whether the exchequer has jurisdiction in cases under the decree 37 H. 8. for tithes in London.

16. Walters said, if a house in London stood empty for want of tenants during a pestilence, tithes should yet be paid for it; and that where a man purchased a house in fee which he had before hired at a certain rent, or by the purchase extinguished, yet he, if he lived in it, must pay tithes according to the former rent: but that if a man built a new house and lived in it, or he leased it rent free, no tithes should be paid.

He said also, that this case was different from the case of under leases at an advanced rent; and of fines taken upon leases.—4 Car. Scacc. *Dr. Burgess' case*. i. 365

17. It was doubted whether a curate and sequestrator of a living in London could sue for tithes in the spiritual court, or other places, or before other judges than 37 H. 8. appoints.—16 Car. B. R. *Anon.* i. 400

18. The court of exchequer were divided in opinion, whether he that is in by sequestration be relievable for customary tithes in London, according to the decree confirmed by the stat. 37 H. 8. c. 12: but it was said that it had been ruled in Chancery, that an impropriator was relievable before the Mayor of London, though not within the words of that decree, and therefore not that court.—1657. Scacc. *Sheffield v. Serjeant* and others. i. 419

19. A plea and demurrer (to a bill in the exchequer for tithes in London) that the plaintiff had not pursued the way directed by the decree confirmed by the stat. 37 H. 8. c. 12. and that therefore the court of exchequer had no jurisdiction, overruled. The rate order by that decree to be paid on the rent of houses in London in lieu of tithes, is assessable according to the several rents paid at the time for the

same.—1657. Scacc. *Sheffield v. Pierce and others.* i. 421

20. A bill lies in the exchequer for non-payment of tithes in London, according to the decree in 37 H. 8. c. 12, for the act has no negative words. It is not said, "before the Mayor of London and not elsewhere;" besides in the case of the King and his farmers, tithes were determinable in that court *ab antiquo*.—1658. Scacc. *Langham v. Baker and others.* i. 428

21. An additional act for the rebuilding of the cathedral and parochial churches in the city of London.—22 Car. 2. c. 11. iv. 175

22. An act for the better settlement of the maintenance of the parsons, vicars, and curates in the parishes of the city of London burnt by the late dreadful fire there.—22 & 23 Car. 2. c. 15. iv. 181

23. Certain ancient customary payments due for houses to the rector of *St. Dunstan's* in the West. No tithes are due to the vicar of *St. Dunstan's* for the Rolls, by the stat. 37 H. 8. c. 12. or otherwise.—31 Car. 2. Scacc. *Scudamore v. Pemberton.* i. 521

24. A *modus* of 18s. for the tithes of a house in London, to be paid by 4s. 6d. a quarter, decreed.—4 Jac. 2. Scacc. *Umfreville v. Hodges and others.* i. 553

25. The stat. 37 H. 8. c. 12. for regulating the payment of tithes in London extends both to lay impropriators and spiritual persons; but the stat. 22 & 23 Car. 2. c. 15. for the maintenance of parsons, vicars, and curates, in those parishes which were destroyed by the fire of London, extends to preaching ministers only.—5 W. & M. Scacc. *Ward and others v. Hilder.* i. 576

26. The Red Hart Inn, in Fetter Lane, is within the city of London, and not within the liberty of the Rolls, and therefore to pay 2s. 9d. in the pound according to 37 H. 8. c. 13.—5 W. & M. Scacc. *Grant v. Cannon.* i. 582

27. White Friars is within the liberties of the city of London, and was so when the 37 H. 8. c. 12. was passed, but it was not within that part of the parish of St. Dunstan in the West, which is in the city of London.—6 W. 3. Scacc. *Grant v. Brawn.* i. 586

28. The inhabitants of St. Lawrence Jury, in the city of London, pay 2s. 9d. in the pound on their respective rents.—6 W. 3. Scacc. *Sayer v. Mumford.* i. 587

29. Two shillings and nine-pence in the pound due for houses in that part of St. Botolph without Aldgate, which lies within the city of London.—6 W. 3. Scacc. *Umfreville v. Batchelor.* i. 589

30. There is a *modus* of 5l. a quarter, payable for *Hooker's Rents*, in *Nightingale-lane*, and *Sun-yard* in the parish of St. Botolph without

Aldgate, in the county of *Middlesex*.—6 W. 3. Scacc. *Umfreville v. Campion.* i. 590

31. An act for the impropriate tithes of St. Bridget alias St. Brides, London.—4 Ann. c. 27. iv. 196

32. Customary payments for tithes of houses in *Cripplegate*, amounting to less than 2s. 9d. in the pound, and the decree confirmed by the House of Lords.—9 Geo. Scacc. *Bennett v. Treppas and others.* i. 782

33. If the Lord Mayor of London refuse his warrant of distress for levying sums of money, assessed under the act of parliament 22 & 23 Car. 2. c. 15. for the better maintenance of the parsons, &c. in the parishes of the city of London, burned by the fire; the court of chancery has jurisdiction, under the act, on petition, to inquire whether the Lord Mayor has done right in refusing the warrant; and if of opinion he has done wrong, the Lord Chancellor can issue a warrant for levying the sums assessed.—21 G. 2. Canc. *Coxall's case.* ii. 113

34. Tithes, though not of common right, may yet, by custom, be due and payable for houses and other buildings.—1 G. 3. Scacc. *Kynaston v. Hattersley.* ii. 183

35. *Semb.* that new houses in the city of London, erected on the site of old houses, for which an ancient customary payment had been made in lieu of tithes, are not within the statute 37 H. 8. if the customary payment existed at the time of the statute; and are therefore protected from the statutory payment of 2s. 9d. in the pound, according to the yearly value.—2 G. 3. Canc. *Williamson v. Gosting.* ii. 189

36. The court of chancery has cognizance of tithes in the city of London, notwithstanding the statute of 37 H. 8. gives the Lord Mayor of London jurisdiction; and that statute extends to lay impropriators as well as to spiritual persons.—3 Geo. 3. Canc. *Kynaston v. Miller.* ii. 196

37. *Semb.* that it is no defence to a demand for tithes in London, under stat. 37 H. 8. that the house for which tithes are demanded, stands on the site of old houses, which never paid any tithes.

38. The clause in stat. 37 H. 8. in exemption of detached sheds, &c. is an exemption in favour of the buildings only, and not of the land; and the privilege does not extend to the buildings when altered.

39. A payment for eight years is not a customary payment within the stat. 37 H. 8. the only clause which mentions eight years being that which relates to the conversion of houses into shops, &c.—27 Geo. 3. Scacc. *Brimston v. Heron.* iii. 1359

40. Notwithstanding the statute and decree 37 H. 8. c. 12. the court of chancery has jurisdiction upon the subject of tithes in London.

41. An account was decreed according to the improved rent.

42. Another defendant setting forth his lease at a low rent and a fine, and alleging by answer that he had never heard of any greater rent being paid, there being no evidence against it, was held liable only according to that rent.

36 Geo. 3. Canc. *Warden and Minor Canons of St. Paul's v. Crickett*, ii. 417

43. After two trials at bar in favour of the claim of the warden and minor canons of St. Paul's to tithes at 2s. 9d. in the pound under the decree and act of parliament, 37 H. 8. upon an issue, whether any, and what less sum had been paid, a new trial was refused, though material evidence was rejected that ought to have been received; this being in the discretion of the court for its information; and all the evidence, though proving that less than 2s. 9d. had been paid, not shewing any certain payment in lieu of tithes.

Whether the issue ought to have been directed in the cross cause. *Quære*, 1st, as being upon the bill of mere lessees, not owners: 2d, as tending to proof of a payment different from that relied upon by their answer, and the establishment of which was prayed by their bill.—

44. Customary payments in lieu of tithes need not be immemorial. Whether eight years sufficient, or what other period, *quære*.—43 Geo. 3. Canc. *Warden and Minor Canons of St. Paul's v. Morris and c. cont.* ii. 516

45. The London court of requests have jurisdiction, by the statute 39 & 40 Geo. 3. c. 104. over a contract for retention of tithes by the tenant, the value of which was under 5l. and therefore if the vicar sue for the same, and recover less than 5l. upon a count in *assumpsit* for a *quantum valent*, the defendant may enter a suggestion on the roll, stating that he was a freeman and inhabitant of the city of London, trading there at the time he was served with the writ, for the purpose of ousting the plaintiff of his costs under the 12th section of the act.—

44 Geo. 3. B. R. *Sandby v. Miller*. ii. 523

46. Warehouses, &c. in London, occupied by the owners, are chargeable for tithes under 37 H. 8. c. 12. according to the improved value, there being no evidence of any letting.—

45 Geo. 3. Scacc. *Kynaston v. the East India Company*. ii. 541

47. Decree under the statute 37 H. 8. for payment of tithes in London, as to warehouses, erected by the East India Company upon the site of old buildings, and occupied by them, at 2s. 9d. in the pound upon the value to be let, without an issue: no specific customary payment in lieu of tithes being alleged.—46 Geo. 3. Canc. *Antrobus v. the East India Company*. ii. 544

48. Decree for tithes in London at 2s. 9d. in the pound under the statute 37 H. 8. c. 12.

the occupiers not proving any certain customary payment in lieu of tithes, which payment would exempt an individual house, if usually made a sufficient time to acquire the character of customary, though within time of memory, and not general through the place or parish.

49. Mere non-payment is not an answer to a demand of tithes under the statute 37 H. 8. any more than to the claim of tithes at common law.

50. An issue refused under the circumstances: 1st, mis-pleading, the defendants not stating customary payments by their answer, but adopting *tenus* payments, disclosed by the answer to their cross bill, instead of moving for leave to file a supplemental answer; 2d, the improbability of establishing those payments after two unsuccessful trials at bar in another cause.—53 Geo. 3. Canc. *Warden and Minor Canons of St. Paul's v. Kettle*. ii. 666

51. The deanery-house or residence of the dean of St. Paul's, is liable to the payment of tithes at 2s. 9d. in the pound on the full value, under the statute 37 H. 8. c. 12. to the warden and minor canons, as parsons of St. Gregory, and is not exempt, either in respect of the maxim *ecclesia ecclesie decimas solvere non debet*, which is confined to the parson and vicar of the same parish church; or, on the ground, that the dean is a great man, within the exception of that statute, in favour of great men or noblemen; the court holding, that a dean is not a great man within the meaning of that statute.—57 Geo. 3. Scacc. *Warden and Minor Canons of St. Paul's v. the Bishop of Lincoln*. iii. 809

52. The term rent, as used in the decree made under the statute 37 H. 8. c. 12. relating to tithes in London, means the rent, properly so called, actually and *bond fide* reserved, without fraud or covin, and not the annual value of the premises.

53. Fines, however large in amount, paid on the renewal of leases of dwelling houses, are not to be considered as increase of rent, or to be taken into calculation, in estimating the amount of the tithes due, provided the rent reserved is equal to that at which the houses have been at any time before let.—58 Geo. 3. Scacc. *Minor Canons of St. Paul's v. Crickett*. iii. 866

54. A bill for tithes by the rector of a parish in London, stated the decree pursuant to the statute 37 H. 8. c. 12. by which payment of tithes was decreed in London at 2s. 9d. in the pound on rents; and in case that should be deemed not binding, it charged, that a previous decree made in the year 1535, and confirmed by an act of 27 H. 8. appointing the sum of 2s. 9d. in the pound, and 2d. for four offering days, in lieu of tithes and oblations in London, was still in force; and in case neither of the said decrees were binding, it charged, that the plain-

tithe was established by sufficient usage and custom from time immemorial precluding the 12th H. 8. which the rector for the time being received certain duties and oblations, calculated according to the rent, which amounted to 12s. 9d. in the pound and upwards. A demurrer for multiplicity of issues was over-ruled.—5 Geo. 4. Scacc. *Chen v. Nodde*. 11. 1149

LUCERN.—See TARES.

MADDER.

1. Madder to pay 5s. per acre in lieu of tithes, for 14 years.—31 Geo. 2. c. 12. iv. 215
2. Continued for the further term of 14 years.—5 Geo. 3. c. 18. iv. 217

MANOR.—See ENDOWMENT—MILLS—MODUS, Manor.

1. Tithes cannot be prescribed for as parcel of a manor; therefore though one may prescribe to have *decimam partem granorum* as parcel of a manor, yet such a prescription for portion *decimarii* is bad.—30 El. B. R. *Sherwood v. Finchcombe*. 1. 106

2. A prescription for the lord of the manor to pay 6l. in satisfaction of all the tithes of the manor, and in consideration of such payment to take the tenth shock, as a temporal profit appendage is good.—40 El. B. R. *Pigot v. Hiron*. i. 135

3. A custom that all the parsons of a parish had held and enjoyed certain land, parcel of the manor of R. in recompense of all tithes wood within the parish, was held good; for it shall be intended, that at first all the land within the parish was parcel of the manor, and the land of the allotter.—40 El. B. R. *Somerton v. Cotton*. i. 141

4. A custom for the lord of the manor to pay six pounds in satisfaction of all tithes of the manor, and in consideration of such payment to take the tenth shock, is good.—42 El. B. R. *Pigot v. Simpson*. i. 148

5. A prescription by a lord of a manor that he and all his tenants should be discharged of tithes of a certain place, he paying therefore 10s. to the chaplain of a chapel within the parish, held good.—3 Car. C. B. *The Vicar of Chesham's case*. i. 359

6. A prohibition was prayed to stay a suit in the Court Christian for tithes upon the suggestion of a modus, which was alleged in this manner: "That the proprietors and occupiers of such a manor, or any parcel thereof, shall pay a great to the parson for herbage tithes."

The court held that this could not be, for if a man had but a few acres of ground in the manor, he should pay a great; but it might be to have been said that the proprietors had the custody of such a manor, for themselves and their families had paid four pounds.—20 Car. 2. B. R. *Stoughton v. Long* and *evad* 11. 478

7. A payment of 5l. per annum by the lord of a manor in discharge of all tithes issuing out of the manor, held good.—23 Car. 2. Scacc. *Wentham v. Titcher* and *notes* A. 494

8. Where land is alleged to be demesne, it must be intended to be part of the manor; for the tithes are not part of the demesne.—22 Car. 2. B. R. *Trotter v. Juxon*. 1. 538

9. A modus of 20s. a year to the vicar of a parish in lieu of all tithes arising within a manor, and the demesne lands thereto belonging.—2 Jac. 2. Scacc. *Tompson v. Hungerford*. 1. 551

10. An exemption of a manor as being part of the possession of the Hospitalers.—11d. Geo. 3. Scacc. *Hutton v. Fielding*. 1. 512

MAPLE.—See WOOD.

MILK.

1. The whole of the meal of milk of every tenth morning and evening is due for tithes.—

2. Quere, Whether it shall be delivered at the church porch, or the vicarage-house.—30 Car. 2. Scacc. *Dodd v. Ingleton*. i. 516

3. A custom to pay every tenth day's milk from the first of May to the first of August yearly, in lieu of all tithe-milk throughout the year, is bad.—30 Car. 2. Scacc. *Silverlock v. Isles*. i. 517

4. Milk is only discharged of tithes when used in the house, and that house must be in the parish in which it is produced.

5. Of common right tithe milk is payable at the parsonage or vicarage-house.—8 W. 3. C. B. *Scotes v. Lowther*. A. 621

6. A custom to set out the whole meal of milk on the 9th day of May, at night, and on the 10th day of May, in the morning, and so upon every 9th day till a lamb yeated in the parish in the next year following be heard to bleat; (such milk to be sent for by the vicar) in satisfaction of all tithes of milk, is void; for during the part of the year in which the modus is payable it gives the parson no more than a tenth, which he ought to have through the whole year; and a man cannot prescribe to pay less of the same thing, but ought to prescribe to pay some other thing in lieu of it, or to pay

it is in some other manner than the best prescribed, so that the parson has no benefit by it. *Hous. Ct. J. said*, that a parishioner is not obliged to deliver his tithe-milk either at the vicarage-house or the church porch, but only to see that it is duly and therefore furnished to the parson. It would have been good, and that the case of *Dod v. Inglaton* was a most equitable decree, guided by the custom of the neighbouring parishes. 20 W. 3. B. R. *Hill v. Hous.* ii. 622
 17. A custom that tithe-milk be paid every tenth night and every tenth morning after Easter Monday till the first lamb is yearned alive after New Year's day, such milk to be delivered, is good.—2 Ann. Scacc. *Ekles v. Bridges* 8. 10. 1707. *Hill v. Hous.* ii. 651
 18. Milk shall be paid by the tenth meal.—2 Ann. Scacc. *Geo. v. Berch.* 1. 1. 1701. ii. 658
 19. No tithe is payable for cream, but as milk.—3 Ann. Scacc. *Lister v. Foy.* i. 670
 20. A prohibition was granted to a suit for tithe-milk upon a suggestion of a modus to pay, from April to November, the tenth day's milk once skimmed made into cheese in lieu of all tithe-milk, with the intent to have the custom tried, that the question might be judicially determined; but a consultation was granted because the plaintiff had not proved his suggestion within six months; and the decision of the question consequently evaded.—4 Ann. B. R. *Foy v. Lister.* i. 670

11. Tithe-milk ought to be paid every tenth meal, and not the tenth of every milking.—2 Geo. Scacc. *Dobson v. Norton.* i. 725

12. Tithe-milk ought to be every tenth meal.—4 Geo. Scacc. *Bate v. Spradling.* i. 736

13. If there be no customary mode of paying tithe of milk, the parishioner need not carry it to the church porch or to the parson's house; but of common right he is to pay every tenth meal milked in his own pails, to be carried away by the parson in his own pails in reasonable time, and if it be not fetched away before the next milking time, the parishioner may throw it upon the ground.—6 Geo. Scacc. *Dodson v. Oliver.* i. 754

14. A custom to pay every tenth meal or morning and night's milk, from all milch cows in the parish from the first going upon the common, for ten tithe meals or turns of morning's and night's milk, in lieu of all tithe-milk, is bad.—12 Geo. Scacc. *Somerville v. Wise.* i. 822

15. A custom that tithe-milk ought to be paid by every tenth evening and morning's meal in kind from Hoe Monday to the second day of November, to commence upon the evening of Hoe Monday (i. e. the Monday fortnight after Easter day) and the morning following, to be taken by the rector at the place of milking, and no tithe-milk to be paid for the residue

of the year, is void upon the fact of its being only a payment of milk for the whole of the year. *Seacc. Brinkley v. Edwards.* 1. 1. 1701. ii. 30
 16. The parishioner is bound to milk the tenth meal of his cows in vessels of his own, at the place and in the manner the other nine meals are milked, and it is the parson's duty to carry it away in his own vessels.—22 & 23 Geo. 2. Scacc. *Cartlow v. Edwards.* ii. 121

17. Where cows are pastured in one parish, and milked in another, the tithe of milk is payable to the parson of the latter parish.—25 Geo. 2. Canc. *Forbes v. Phelps.* ii. 126

18. Custom that all tithe-milk arising in the parish ought to be brought to the church porch for the use of the parson, established; and the defendant, who had set out the tithe-milk in the usual place of milking, in clean pails, and in consequence of its not being fetched by the parson had thrown it away, was decreed to account for the value.—7 Geo. 3. Scacc. *Morgan v. Neville.* ii. 222

19. The tenth meal of milk is due of common right, and it would be inconvenient to send for milk twice a day, when each time there might not be a pint.—19 Geo. 3. Scacc. *Ruffe v. Ruffe.* 1. 1. 1794. ii. 235

20. Custom that tithe-milk ought to be brought to the church porch for the use of the parson, established, and an account decreed, without directing an issue.—13 Geo. 3. Scacc. *Morgan v. Neville.* ii. 282

21. The parson is entitled to the tenth morning's meal and the tenth evening's meal of milk, for his tithe of milk.—16 Geo. 3. Scacc. *Borworth v. Limbrick.* ii. 310

22. The established course of setting out tithe-milk is, that the entire meal of the whole herd of cows shall be set forth every tenth day, both morning and evening; and where a custom to the contrary is alleged, it must either be formally pleaded, or supported by such evidence as will be sufficient to warrant a court of equity in directing an issue to try the validity of the custom.—20 Geo. 3. Scacc. *Hutchins v. Full.* ii. 344

MILLS.

1. Whether there was a composition of half a mark to the vicar, and 8s. to the rector in lieu of tithes of the mills of Lisheard.—8 Edw. 2. i. 8

2. If tithe be demanded of a mill erected of new, no prohibition lies, *Art. cleri.*—9 Edw. 2. stat. 1. c. 5. iv. 5

3. If a man prescribe to pay to the parson a certain thing as a modus decimandi for all the demesnes of his manor of D. and after erects a

windmill upon part of the said demesnes, he shall not pay any tithes for this mill, but the modus given for the demesnes shall go in discharge of this also which is built upon the land discharged.—39 EL. B. R. *Russell v. Moore*, 1 Ro. Abr. 651.

4. If two fulling mills be subject to a rate tithe and one be altered into a corn mill, tithe in kind must be paid; so if two pair of stones be put in the place of one pair.—10 Jac. C. B. *Anon.* i. 203

5. In some cases tithe is payable for mills, in some not. No personal tithe by the statute is to be paid for mills, but where by special custom it has been paid.

6. A custom was alleged to pay a modus for all mills erected or to be erected; held that it could not extend to newly erected mills.—14 Jac. C. B. *Jake's case*. i. 257

7. A mill newly erected upon glebe land is titheable.—15 Jac. B. R. *Anon.* i. 262

8. No tithes are to be paid for fulling mills, tin mills, &c. for the reason (*inter alia*) that the civilians are not agreed whether such tithes should be prædial or personal.—17 Jac. B. R. *Dandridge v. Johnson*. i. 304

9. Copper mills, fulling mills, shaving mills, glass houses, &c. shall pay no tithes.—5 Car. C. B. *Anon.* i. 370

10. Mills erected before 9 E. 2. are not titheable.—5 Car. C. B. *Scobie's case* i. 371

11. Tithes shall not be paid of a mill erected before 9 E. 2. and if such a mill fall and it be rebuilt, the discharge shall be good and revive.—5 Car. C. B. *Pain v. Evans*. i. 371

12. The common tradition that tithes are not due of ancient mills, means those before 9 E. 2. only, and not those before memory of our ancestors.—10 Car. B. R. *Anon.* i. 382

13. Ancient mills are not titheable.—15 Car. B. R. *Anon.* i. 398

14. If there have been two ancient corn mills *de tempore*, &c. for which 6s. 8d. has been paid for the tithes *de tempore*, &c. and after by continuance of time the mill stream changes its course, and runs into a place a little distance from the ancient stream, and thereupon the owner of the mill pulls down one of the ancient mills and rebuilds it in the new place where the stream runs, this shall be discharged of any tithes by reason of the ancient modus, for this comes by the act of God, and not by the act of the party. But the court said, that if the stream be altered, by the act of the owner himself, tithes ought to be paid thereof as for a new mill.—11 Car. B. R. *Johnson v. Dandridge*. 1 Ro. Abr. 641. 652.

15. If for two ancient messuages, and two ancient water grain mills, time out of memory, &c. there have been used to be paid to the parson 20s. per annum in lieu of all tithes issuing out of the said messuages and mills, and after

the owner of the messuages and mills erects two new grain mills within the said messuages, it seems the modus will not discharge these new mills from the payment of tithes, because the tithe of a mill is not merely prædial, but mixed with the personality, and is more of the personality than of the prædialty. (Upon a demurrer) *Berkley*, J. and the court seemed to incline that the modus should not extend to these new mills; but they did not resolve it, because the issue was taken upon the modus, as to the two messuages and the ancient mills, and at *onus prois* the plaintiff in the prohibition was nonsuited, by which he was nonsuit as to the demurrer also, and for this cause a consultation was granted for the whole.—13 Car. B. R. *Goodwin v. Smith*. 1 Ro. Abr. 652.

16. A man may prescribe that there is a custom in the hundred of *Oxalston*, in the county of Middlesex, and, in the county of Surrey, that if any common baker of bread inhabiting within either of those hundreds erect any water mill, windmill, or hand mill, within either of those two hundreds to grind his grain, to be employed in making of bread for himself in his trade of a common baker, for the making of bread for the maintenance of his family and to sell to his customers inhabiting there, or near the said hundreds for their sustentation, by the sustentation of whom the persons within the said hundreds have more ample tithes, viz. of those who have lands or tenements, and others, as of handicraft tradesmen, offerings, and such like, no tithes have used to be paid, from the time, &c. for the grinding of this grain so employed as aforesaid in his trade, for two hundreds he may prescribe in *non decimando*. A prohibition upon this suggestion where the baker inhabited in one of the hundreds, and erected a mill in the other hundred.—15 Car. B. R. *Kidder v. Edwards*. 1 Ro. Abr. 654.

17. A modus for a water mill is not destroyed by the addition of another pair of stones under the same roof.

18. *Quære*, Whether of a titheable mill, personal tithes (the tenth of the clear gain) or prædial (the tenth of all the income in general) ought to be paid.—3 W. & M. B. R. *Gamble v. Falkingham*. i. 571

19. No tithe of an ancient mill.—7 W. 3. Cam. Scacc. *Ansell v. Adman*. i. 610

20. In a suggestion for a prohibition to stay a suit for tithes of an old mill the party ought to prescribe in *non decimando*, and make an affidavit of the fact.—10 W. 3. B. R. *Hart v. Hall*. i. 632

21. The tenth toll dish is due of new mills.—3 Ann. Scacc. *Ross v. Windsor*. i. 661

22. The tithe of corn ground in a horse malt mill is a personal tithe, and due only where it has been paid within forty years before, and not payable by the tenth toll-dish of the corn

ground, but by a tenth part of the clear profits, over and above all incidental charges.—4 Ann. Dom. Proc. *Newte v. Chamberlaine*. i. 679

23. The court was divided upon the point, whether tithes of an ancient corn mill were due of common right.—6 Geo. Scacc. *Dodson v. Oliver*. i. 754

24. The court dismissed a bill for the tithes of a water corn mill, no proof having been made of the payment of tithes at any time for it.—9 Geo. Scacc. *Hughes v. Billingham*. i. 781

25. Mills are titheable, but the tithe is personal, and to be paid of the clear gain, after all charges and expenses are deducted.—2 & 3 Geo. 2. Canc. *Carleton v. Brightwell*. ii. 7

26. Modus of 2s. payable yearly for a mill, established after verdict, though the jury found, that anciently the mill had two pair of stones, and no more, and that there had been added to the mill one pair of stones, which were carried by the same frame and wheels, but that the mill could work only two pair of stones at one time.—6 Geo. 2. Scacc. *Goodwin v. Wortley*. ii. 33

27. Tithe of a corn mill not a predial, but a personal tithe, and therefore liable to deduction for necessary charges attending the mill.—7 Geo. 2. B. R. *Donalt v. Lowther*. ii. 53

28. Bill for tithes of a mill, the defendant pleaded a modus for the mill, when it was part a corn mill, and part a fulling mill; it appearing however, that several years back the fulling mills had been removed, and a pair of mill stones substituted in their place, and that the mill had ever since been used as a corn mill, the plea was overruled.—17 Geo. 2. Canc. *Talbot v. May*. ii. 93

29. Suit in spiritual court for tithe of a grist-mill: the *libel* charged that the plaintiff had ground 300 quarters of wheat, &c. the tithes of which were worth certain sums mentioned in the *libel*. The court held, that this was to be taken as a demand of predial tithes, and therefore a prohibition was granted, for tithes of a mill are only personal.—24 & 25 Geo. 2. B. R. *Cooke v. Derby*. ii. 122

30. A newly erected mill, built near to, and in the place of an ancient mill, and with part of the materials of the ancient mill, is liable to the payment of tithes. The tithes are, however, in the nature of a personal tithe only (that is to say), the tenth part of the clear profits arising from corn, &c. ground in the mill, over and above all incidental charges.—32 & 33 Geo. 2. Scacc. *Thomas v. Price*. ii. 170

31. An ancient corn-mill is exempt from tithes; and using it for a time, either wholly or partially as a lead-mill, does not destroy the right of exemption.

32. The tithe of a mill is personal, and is payable to the parson of the parish where the

mill is dwells, though the mill be in another parish.

33. Tithes are not payable for corn ground solely for distillation and for feeding of hogs, for it would be impossible to distinguish the *quantum* of the tithe of the grist, from the profits arising from the trade of the distiller.

34. Tithes are not payable for the profits of a trade.—10 Geo. 3. Scacc. *Wilson v. Mason*. ii. 240

35. Tithes are not payable for an ancient corn-mill.

36. Where an ancient mill, formerly a tuck-mill, had lately been converted to an oat-mill, and used by the owner for the grinding of oats for his bounds, but for no other purpose, it was holden that no tithes were payable for the same.—11 Geo. 3. Scacc. *Hicks v. Triese*. ii. 263

37. The tithe of a mill is recoverable as a personal tithe, but may, in some cases, be so far predial, and have reference to the place in which it arises, as to fall within the description of a small tithe, in respect of the land on which the mill is erected.—24 Geo. 3. Scacc. *Gaches v. Haynes*. iii. 1326

38. A water-mill is titheable as a predial and local tithe, in respect of the person to whom it is due, but as a personal tithe in the mode of accounting.

39. The tithe of the clear profit being only due, the rent is the first deduction; and in the case of a new mill in the occupation of the owner, a yearly value, in the nature of a rent, is to be set upon it and deducted.—37 Geo. 3. Scacc. *Hall v. Machet*. ii. 464

40. A miller carrying on the trade of a meal-man, is obliged to set out in his answer to a bill for the discovery of tithes, what quantity of meal ground at his mill he has sold, but not the prices for which he has sold it.—50 Geo. 3. Scacc. *Chapman v. Pilcher*. ii. 581

41. In answer to a bill for tithes of a mill, the defendant stated the annual quantity of corn ground thereat, and the charges for grinding, and the outgoings and expenses of the mill; in taking the account, allowance was ordered to be made for a yearly value in nature of rent, and for servants' wages, repairs, and other outgoings.—54 Geo. 3. Canc. *Manby v. Taylor*. ii. 696

MINES.—See QUARRIES.

1. Tithes of the Stannary in Cornwall paid by the king.—33 Edw. 1. i. 6

2. A petition to the king for the tithe of mines.—14 Edw. 2. i. 10

3. A petition to the king and council for tithe of an iron mine granted by Edw. 1.—2 Edw. 3. i. 12

MODUS.

I. What it is.

II. By whom payable.

III. To whom payable.

IV. When to be paid.

V. What is a good modus.

VI. What is a bad modus.

1. For Rankness.

2. For Uncertainty.

VII. How and when destroyed, or not.

VIII. How and where to be tried.

1. Common Law.

2. Chancery. A. Bill.

B. Injunction.

C. Answer.

D. Issue.

E. Decree.

F. Costs.

3. Exchequer. A. Bill.

B. Injunction.

C. Answer.

D. Plea.

E. Tender.

F. Issue.

G. Decree.

H. Costs.

4. Spiritual Court.

IX. Acre.

X. Agistment.

XI. Apples.

XII. Beasts.

XIII. Bees.

Bigg, see M. Corn.

Bovate, see M. Osgang.

XIV. Calves.

Cattle, see M. Beasts.

Chickens, see M. Eggs.

Cider, see M. Apples.

XV. Clover.

Colts, see M. Foals.

Common, see Common.

XVI. Corn.

XVII. Cows.

Cowhouse, see M. Milk.

Ducks, see M. Eggs.

XVIII. Eggs.

Estovers, see M. Fuel.

XIX. Farm.

Feathers, see M. Geese.

Firewood, see M. Fuel.

XX. Foals.

XXI. Forest.

XXII. Fruit.

XXIII. Fuel.

XXIV. Garden.

Garth, see M. Orchard.

XXV. Geese.

Grasses, see M. Hay.

XXVI. Hamlet.

XXVII. Hay.

Hearth, Hearth-penny, Hearth-wood, see M. Fuel.

Hay, see M. Corn.

Hens, see M. Eggs.

Herbage, see M. Agistment.

XXVIII. Honey.

XXIX. Hops.

House, see M. Hay.

Inclosure, see M. Parish.

Lactage, see M. Milk.

XXX. Lambs.

XXXI. Manor.

Marshland, see M. Parish.

XXXII. Milk.

Mill, see Mill.

XXXIII. Onion Seed.

XXXIV. Orchard.

XXXV. Osgang.

Pannage, see M. Agistment.

XXXVI. Parish.

XXXVII. Park.

Pears, see M. Apples.

Perry, see M. Apples.

XXXVIII. Pigs.

XXXIX. Potatoes.

XL. Rape Seed.

Reeds, see M. Herts.

XLI. Sheep.

Small Tines, see Tines Small.

Township, see M. Vill.

XLII. Turnips.

Vegetables, see M. Garden.

XLIII. Vill.

XLIV. Wood.

XLV. Wool.

XLVI. Yardland.

I. What it is.

1. A *modus decimandi* is when lands, tene-ments and hereditaments have been given to the parson and his successors, or an annual cer-tain sum or other profit always, time out of mind, to the parson and his successors, in full satisfaction and discharge of all the tithes in kind in such a place.

2. A *modus decimandi* extinguishes tithes in kind, and it shall be intended that the *modus* began at first by real composition, by which the lands were discharged of the tithes, and a yearly sum in satisfaction of them assigned to the parson, &c.—7 Jac. The Case *De modo decimandi*. i. 183

3. Where there is a *modus*, the money has become the tithe, and may be recovered in the spiritual court: the tithes in kind are for ever extinguished in their spiritual nature, and are become lay fee.—12 Jac. B. R. *Cowp v. Andrew*.

4. Every *modus* is a discharge of the natural tithe, and so works by way of discharge, as is resolved in the parson of *Peckham's case*.—13 Jac. C. B. *Sutton v. Montague*. i. 248

5. A real composition is when a sum of money or lands are given to the parson, with the assent of the patron, and ordinary, in recompense of tithes, then the land is discharged of tithes in specie, and the modus is made tithes, and upon grant of the lands the grantee shall have the benefit of it; and a *modus decimandi* is sustained upon the presumption of such a composition which is lost.—11 Car. B. R. *Sydney v. Holmes.* i. 383

6. A *modus* is nothing but a real composition for or in lieu of tithes, or an annual profit certain and permanent.—18 Ann. Scacc. *The Archbishop of York v. the Duke of Newcastle.* i. 661

7. A *modus* is a composition time out of mind.—4 Ann. B. R. *Startup v. Dodderidge.* i. 666

8. A *modus* is time out of mind, and a composition only a late agreement.—2 Geo. Scacc. *Benson v. Watkins.* i. 721

9. A *modus* is a real composition run into a prescription, made *concurrentibus his qui de jure requiruntur*, who might dispose of the rights of the church as well as private persons of theirs, and if these contracts now appeared in writing, they would be good, and the memorials being lost, the parties may prescribe, and shall have the same advantage of them as if they appeared.—3 Geo. Canc. *Chapman v. the Bishop of Lincoln.* ii. 11

10. A *modus* and a custom are the same, for a *modus* is the manner of paying, and the manner of paying for ever is a custom.—10 Geo. 2. B. R. *Sharp v. Leather.* ii. 62

11. A *modus* is an ancient composition between the owners of the land in a parish, and the rector, which gains strength by time.—20 & 21 Geo. 2. Canc. *Bliss v. Darnley.* ii. 108

12. The word *modus* is merely a technical term, and it is not necessary, either in law or equity, to use that word in laying a *modus*, the material words being, so much money paid in lieu and satisfaction of tithes.—21 Geo. 2. Canc. *Richards v. Evans.* ii. 109

13. This *modus* or composition must be supposed to commence, according to the law of England (by a pretty extraordinary law, and which, I believe, no other country does) from the transportation of R. 1. to the Holy Land.—27 & 28 Geo. 2. Canc. *Chapman v. Smith.* ii. 141

14. It has been objected that the receipts do not call it a *modus*, and that they are very nice in taking receipts. Very often ministers will not call it a *modus* in the receipt; because they will not prejudice their successors, though they will give a receipt for the sum as usual. In very few instances will the rector submit to call it a *modus* in the receipt; and if he will not, the parishioners cannot compel him; but must submit, or else pay without a receipt.—S. C. *Ib.*

II. *By whom payable.*

1. A custom to pay a *modus* for all tenants and occupiers of lands in discharge of tithes was held good.—6 W. 3. C. B. *Stopp v. Peacock.* i. 607

2. *Moduses* restricted to inhabitants.—6 Ann. Scacc. *Pern v. Fountain.* i. 686

3. The objection is, that it is not said by whom it is to be paid; and I do not know any case in the books or in experience, where it is not alleged to be paid by somebody, and it is very reasonable it should be said by whom; because the parson may then be sure to whom he must apply, or against whom he may have a remedy for his tithes.—20 Geo. 2. Canc. *Carte v. Ball.* ii. 103

4. A *modus* payable by the owner of the land is good, though commonly a *modus* is made payable by the occupier.—36 Geo. 3. Scacc. *Ord v. Clarke.* ii. 424

5. An objection to a *modus* claimed for owners and occupiers, that the farmer could not claim a discharge from tithes, as none were due from them as owners, was overruled.—36 Geo. 3. Scacc. *Scarr v. Trinity College, Cambridge.* ii. 429

6. A *modus*, laid to be payable by "certain occupiers," uncertain and insufficient.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn.* ii. 894

7. A *modus* laid as payable by the owner of the lands in question held good.—59 Geo. 3. Scacc. *Driffild v. Orrell.* iii. 934

III. *To whom payable.*

1. A *modus* may be good though not paid to the parson of the parish, but to one who has a portion of tithes.—38 Car. 2. B. R. *Trollop v. James.* i. 532

IV. *When to be paid.*—See *Modus*, *bad.*

1. *Moduses* disallowed, no time being mentioned when payable.—8 Geo. Scacc. *Goddard v. Keble.* i. 777

2. A *modus* set aside because no day of payment mentioned in the answer.—8 Geo. Scacc. *Penrice v. Dryard.* i. 778

10 Geo. Scacc. *St. Eloy v. Prior.* i. 796

3. Where the day of payment of a *modus* is omitted in the answer, the defect may be supplied by a cross bill.—10 Geo. Scacc. *Phillips v. Symes.* i. 800

4. A *modus* alleged to be payable on or about a certain day is bad, but although objected to at the hearing, the court gave the party liberty to amend his bill, paying the costs of the day.—11 Geo. Scacc. *Sir Edw. Blacket v. Finney.* i. 817

5. A defendant by answer insisting on a *modus*, but omitting to state the day of payment, allowed to supply the omission by evidence. But in a cross bill to establish a *modus*, the day of payment must be expressly

alleged.—6 & 7 Geo. 2. Scacc. *Gibb v. Good-*
son. ii. 58

6. In the court of Exchequer, if a particular time was not laid, that court formerly would have overruled the modus, and not gone into the merits; but latterly they have very properly let in a greater latitude of proof; and it is sufficient if it is laid at a particular time, or thereabouts.—20 Geo. 2. Canc. *Cox v. Bull*. ii. 103

7. The particular day of paying a modus need not be laid or proved: it is sufficient if it be "on or about;" notwithstanding it was formerly held to the contrary in the exchequer.—24 Geo. 2. *Richards v. Evans*. ii. 109

V. What is a good Modus.—See respective heads.

1. A man cannot prescribe to pay less of the same thing, but ought to prescribe to pay some other thing in lieu of it, or to pay it in some other manner than the law prescribes, so that the parson has a benefit by it.—10 W. 3. B. R. *Mills v. Vaux*. i. 629

2. Court divided, whether a modus of ten flocks of wool, and two lambs, for all tithes, good or not. Payment of tithe of one kind, or payment of a modus for one kind of tithe, cannot be a discharge as to another kind.—3 Ann. Scacc. *Archbishop of York v. Duke of Newcastle*. i. 661

3. A modus of nine cart loads of log wood, in lieu of all tithes of a manor, held good after verdict; as a hoghead of cider for such tithes.—3 Geo. 2. Scacc. *Woolferston v. Mainwaring*. ii. 11

4. A modus of 2d. per acre for 18 acres, without any time of payment, or the person by whom payable being specified, held good after verdict.—3 Geo. 2. Scacc. *Idem*. ib.

5. No objection to a modus, that upon an issue directed, it should be found to cover more land than was contended for.—3 Geo. 2. Scacc. *Taylor v. Walker*. ii. 22

6. An allegation in a declaration in prohibition of a custom, for the tenants and occupiers of a certain tenement, yearly to pay 5s., and to perform certain services to the parson in lieu of the tithes of corn and hay, which said modus the parson had always accepted, held good in substance after verdict, though in form it ought rather to have been laid as a prescription than a custom or a modus.—10 Geo. 2. B. R. *Sharp v. Lowther*. ii. 62

7. On a cross bill to establish a modus of 4d. for every acre of grass, cut and made into hay, in lieu of tithe hay, it was objected that the modus was illegal, as it was not stated to be "and so in proportion for a greater or less quantity than an acre." But the court held it to be well set forth, and directed an issue to try it.—30 Geo. 2. Scacc. *Gills v. Horrer*. ii. 151

8. To a bill for tithes, the answer set up a

modus; for a place described not by acres and bounds, but by a mess annexed to the answer in lieu of all tithes, or at least of tithe hay, it was objected that the answer was too uncertain. The court over-ruled the objection, and directed two issues, the one as to a modus for all tithes, the other as to a modus for tithe hay.—25 Geo. 3. Scacc. *Clarke v. Jennings*. ii. 414

9. Where a modus was claimed for lands, as being in a town or hamlet, and it was proved in evidence, that there was not any township or hamlet, but that the lands described by that name were known as a distinct division of a parish, and that the bounds were well known, the court held the description sufficient.—36 Geo. 3. Scacc. *Saunders v. Trinity College, Cambridge*. ii. 429

10. Objection to a modus that it was not stated to be or to have been immemorially payable, but was only averred to have been immemorially paid, over-ruled.—6 Geo. 3. Scacc. *Idem*. ii. 429

11. To a bill for tithes by the rectors of two parishes, which had been recently consolidated, the defendant set up a modus or annual payment of 7s., payable to the rector of the said parishes in lieu of all tithes. It was objected, that the modus was not well laid, and could not be proved, the parishes having only lately been consolidated, and the predecessors of the plaintiff having been rectors of one of the parishes only. But the court directed an issue, and allowed it to be framed to meet the inquiry, whether the payment had been immemorially made to the rectors of the one parish.—51 Geo. 3. Scacc. *Uthoff v. Lord Huntingfield*. ii. 649

12. A modus pleaded, of a sum of money anciently and uniformly paid for tithes within a certain part of a parish, was holden good, although it far exceeded the sum which such part should have paid, if it had contributed its due proportion, with reference to the rest of the parish, measuring the share of such part according to its extent with respect to the whole parish, and although some witnesses proved it to have been broken in upon, and one, that he remembered, (as appeared from depositions in an old cause) the origin of the payment.—56 Geo. 3. Scacc. *Byan v. Booth*. iii. 716

13. It seems to be no objection to a modus, that it excepts articles of modern introduction.—57 Geo. 3. Scacc. *Jos v. Hockley*. iii. 816

14. A measure of oatmeal in lieu of the tithe of corn and grain, is a good modus.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn*. iii. 894

15. One modus for both hay and agistment is suspicious, and requires very strict proof that it is a payment in lieu of both. The payment however was sent to be tried by a jury.—1 & 2 Geo. 4. Scacc. *Williamson v. Sutton*. iii. 1049

16. A custom for every householder inhabitant within the parish, to pay 8d. at Easter by the name of hearth-silver, garden-silver, shot

and wether silver, in satisfaction of the tithes of the produce of any garden, yard, or orchard, occupied in the parish by such householder inhabitant, and of all woods, cuttings, and lopplings, cut in the year, upon land in the parish in his occupation, and also of the agistment-tithe is good.—26 Geo. 3. Scacc. *Bennett v. Ridd.* iii. 1338

VI. *What is a bad Modus.*—See Custom—See Modus, Farm, and under the heads of the respective subjects of Moduses.

1. Where a modus covers only part of the year, and nothing is said as to the residue, it is bad.

2. A modus is bad where an uncertain thing is to supply the place of a certain duty, as where one prescribed to pay yearly by the hands of two persons inhabiting such houses, 4d. to the vicar in satisfaction of all tithes; for the houses may decay, or none may live in them, and so nothing shall be paid.—30 Ed. B. R. *Perry v. Sam.* i. 96

3. A prescription to pay calves and lambs, and 1d. for each milch cow, in satisfaction of all tithes of lambs, calves, milch kine, and all barren and other beasts and agistment, held bad.—38 Ed. Scacc. *Munday v. Lovitz.* i. 118

4. A modus of a penny for every milch cow, for tithes of milch kine, and beasts agisted, is bad; for tithes for one thing cannot be tithes for another; but a modus of four pence for all cows and beasts agisted would perhaps be good.—38 Ed. B. R. *Slarington v. Fleetwood.* i. 132

5. If a man prescribe to pay 1d. or thereabouts, for the tithes of every acre of arable land, it is bad for the uncertainty.—7 Jac. Allen's case. 2 Ro. Abr. 265.

6. A custom to pay certain sheaves of corn in lieu of all tithes of corn is void, for it ought of right to be made into sheaves.—13 Jac. B. R. *Anon.* i. 249

7. A custom that all occupiers and tenants inhabiting out of a vill should pay 4d. an acre in satisfaction of all tithes of land in it, was held unreasonable, and a leaping custom, not fixed to any person certain, nor to the land, nor of any permanence.—16 Car. 2. B. R. *Bowdery v. Bushel.* i. 440

8. A modus of 4s. for every day's ploughing of wheat, and 2s. for barley, is void for uncertainty; but if it had been laid as so much for every day's work, with an averment of its certainty, it might be good. But Hyde thought wheat could scarcely have been worth so much time out of mind.—15 Car. 2. B. R. *Took v. Ledgierd.* i. 440

9. A modus of one penny for a calf, so for a horse and cow in discharge of tithes of all gross cattle is bad.—16 Car. 2. B. R. *Anon.* i. 442

10. A modus of 1d. for all agistment and

working and barren cattle is void.—16 Car. 2. B. R. *Hutchinson v. Atkinson*, and Archbp. of York. i. 448

11. A custom to pay tithes hay in shocks, in lieu of tithes of broom and other profits of the tenement is bad, for a modus of labour of one kind will not serve for another.—19 Car. 2. B. R. *Brown v. Haywood.* i. 454

12. A payment for cows having calves in lieu of tithes for all cows and calves, and herbage and pasture of lands, is void, for a modus for one species can be no ground for a modus *de non decimando* as to another. A custom to pay certain sums for five cows having calves, six cows having calves, and ten cows having calves, in satisfaction for all cows having calves, is void; for there is no payment for any number between six and ten, nor when the number exceeds ten.—9 W. 3. C. B. *Norton v. Brigs.* i. 624

13. A modus to pay 2s. in the pound out of the tithes reserved is void.—13 W. 3. B. R. *Byne v. Dodderidge.* i. 643

14. A custom to pay 2s. in the pound of the true improved yearly rent of land in lieu of the tithes of it, is void. And so is a custom to pay a proportion of the true improved yearly value.—E. 4 Ann. B. R. *Startup v. Dodderidge.* i. 666

15. A custom to pay one shilling in the pound of the yearly rent of lands let at the full value; and so of the yearly value of lands not let in lieu of tithes, is bad.—12 Ann. Scacc. *Bean v. Lee.* i. 703

16. Moduses of 5s. per acre for winter corn, and 4s. per acre for summer corn, and 3s. per acre for meadow, too rank.—2 Geo. Scacc. *Benson v. Watkins.* i. 721

17. A modus for pasture of one shilling in the pound value is void; and so of the value of the rent.—4 Geo. Scacc. *Smith v. Roodiff.* i. 734

18. Moduses disallowed, no time being mentioned when payable. Note, the reporter believes this is the first instance in a court of equity that moduses were disallowed upon this reason.—3 Geo. Scacc. *Goddard v. Keble.* i. 777

19. A modus set aside because no day of payment was mentioned in the answer.—8 Geo. Scacc. *Penrice v. Drydd.* i. 778

20. A modus of one shilling in the pound for all pasture and sward ground disallowed, because there was no day mentioned for the payment.—10 Geo. Scacc. *St. Eloy v. Prior.* i. 796

21. Where the day of payment of a modus is omitted in the answer the defect may be supplied by a cross bill.—10 Geo. Scacc. *Phillips v. Symes.* i. 800

22. A modus to pay a sum of money; but if in another person's hands, money or tithes in kind is bad, because devolutive.—11 Geo. Canc. *Webber v. Taylor.* i. 802

23. A *modus* alleged to be payable on or about a certain day is bad, but although objected at the hearing, the court gave the party liberty to amend his bill paying the costs of the day.—11 Geo. Scacc. *Sir E. Blacket v. Finny.* i. 817

24. *Modus* that the inhabitant of a certain tenement, with the lands usually enjoyed therewith, had been accustomed to pay the *modus* stated for tithe corn; held void for uncertainty, as the house might fall down, or be uninhabited, or the lands be changed or shifted. 2 & 3 Geo. 2. Canc. *Carleton v. Brightwell.* ii. 7

25. *Modus* of 6s. 8d. for one calf in ten, without stating, and so less in proportion for a less number than ten, held bad.—6 & 7 Geo. 2. Scacc. *Gibb v. Goodman.* ii. 51

26. *Modus* stated to be payable to the parson or curate, not good.

27. A *modus* in respect of ancient inclosed lands does not extend to lands newly inclosed, allotted to the owner of the ancient inclosed lands in lieu of right of common.—9 Geo. 2. Scacc. *Whieldon v. Harvey.* ii. 60

28. It has been said, and very rightly, a *modus* to take part of the tithes for the whole could never have been at any time a satisfaction for the whole, and has always been holden a void custom.—14 Geo. 2. Canc. *The Archbp. of York v. Sir M. Stapleton.* ii. 83

29. Account of vicarial tithes decreed against a *modus* of 1s. per acre for each acre of marsh land for tithe of hay, and all other vicarial and small tithes; the vicarage appearing to have been established by an endowment in 1367, within legal memory.—53 Geo. 3. Canc. *Scott v. Smith.* ii. 658

30. A *modus* of a sum of money in gross, payable to a vicar on his induction, in lieu of certain tithes during his incumbency, is bad. So also is such a payment with a further annual payment of a smaller sum in lieu of certain tithes during the same period.—54 Geo. 3. Canc. *Manby v. Taylor.* ii. 696

31. Money payments in lieu of tithes, ascertained by reference to, and regulated by the poor's rate, holden to be clearly bad as *moduses*: and the vicar's books are evidence to shew that the money payments had been so ascertained and regulated.—57 Geo. 3. Scacc. *Walter v. Holman.* iii. 830

32. A *modus* for tithes of articles of modern introduction cannot be supported.—57 Geo. 3. Scacc. *Layng v. Yarborough.* iii. 854

33. A *modus* of 1d. called a *plough-penny*, payable by every occupier of land in tillage, in lieu of all small prædial tithes grown upon such lands, is bad.—58 Geo. 3. Scacc. *Williamson v. Lord Lonsdale.* iii. 870

34. A *modus* laid to be payable "by certain occupiers" uncertain and insufficient.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn.* iii. 894

35. A *modus* for pasture land stated to be in lieu of the tithes of titheable matters yearly arising, &c. covers too much.—59 Geo. 3. Canc. *Lake v. Skinner.* iii. 976

36. The union of articles distinctly titheable in one *modus* objectionable.—1 & 2 Geo. 4. Canc. *Short v. Lee.* iii. 1013

37. A *modus* for both hay and agistment is suspicious, and requires very strict proof that it is a payment in lieu of both. The payment, however, was sent to be tried by a jury.—1 & 2 Geo. 4. Scacc. *Williamson v. Hutton.* iii. 1049

VI. 1. *For Rankness.*

1. The *modus* is insisted to be too high in point of value, and therefore that the court is bound to take notice of it, and ought to overrule it. That doctrine has certainly prevailed in several cases, and, I believe, more strongly since the publication of Bishop Fleetwood's book; for before that, I believe these things were not so commonly known. That objection, though founded in fact, is taken to be allowed by the court without a jury: that objection has been more commonly allowed as to the value of particular things, for which the *modus* has been set up, as where it is so much for a sheep, or lamb, or a particular kind of product, the value of which may be shewn at these times: but it may differ as to a *modus* set up as to the value of lands, because several incidents and accidents may attend that: the alteration of traffic or commerce, or of the culture of land, either improved or falling in value by accident, that makes such a *modus* more uncertain than in respect of the value of a particular kind of product, as calves, sheep, lambs, and things of that kind. Therefore, though this objection is taken in point of law for the judgment of the court, the court does not always proceed as bound to determine it that way, but has considered it as a matter of fact proper for a jury.—27 & 28 Geo. 2. Canc. *Chapman v. Smith.* ii. 141

2. *Moduses* of 5s. an acre for wheat; of 2s. 6d. an acre for oats or other grain, except wheat; of 1s. 4d. an acre for all grass-lands mowed, called uplands or forest lands; of 2s. an acre for meadows mowed, in lieu of tithes of hay, grass, and pasture; and of 2s. 6d. for every farrow of pigs in lieu of tithes of pigs, held void for rankness.

3. A *modus* of 6d. yearly for every cow depastured on uplands, and 9d. for every cow depastured on meadow lands, in lieu of the tithes of all cows, calves, and milk, over-ruled, partly because too rank; but chiefly because the recompense was too vague; for the parson in lieu of a certain right at common law, must have a right equally certain by prescription; and in this case, if a cow were depastured partly

on the uplands, and partly on the meadows, he would not know which modus to demand, or how to distinguish them.—3 Geo. 3. Scacc. *Torriano v. Legge*. ii. 200

4. Moduses of 2s. an acre, in lieu of the tithes of every acre of inclosed arable lands; and of 1s. 6d. an acre in lieu of the tithes of every acre of common field arable lands, when respectively sown with corn and grain, held to be rank.—8 Geo. 3. Scacc. *Gale v. Carpenter*. ii. 226

5. Moduses of 4s. for every acre of wheat; and of 2s. for every acre of lent corn, reaped within the rectory, in lieu of the tithes of such wheat and lent corn, payable yearly on the feast of St. Thomas the Apostle, held void for rankness.—9 Geo. 3. Scacc. *Hulse v. Munk*. ii. 234

6. Rankness of a modus is not a question of law but of fact to be tried by a jury.—16 Geo. 3. Scacc. *Bedford v. Sambell*. iii. 1247
20 Geo. 3. Scacc. *Twells v. Welby*. iii. 1286

7. The rankness of a modus for tithes is a question of fact, and not of law.

8. Courts of equity, which are judges both of the fact and the justice of the case, may certainly over-rule a modus, where they see that the internal evidence against the possibility of its immemorial existence is so strong, that it would be nugatory or oppressive to send it to be tried by a jury. (And by BLACKSTONE, J. so it was done by Lord Hardwicke in *Moore v. Beckford*, Hil. 1750, 24 Geo. 2. who said he should be ashamed to send a modus of 30l. per annum to be tried by a jury, where the real value of the tithes was not above 60l. and decreed for the plaintiff, the parson, with costs.) But when its goodness is referred to a court of law, we must take it for granted that the fact, of its having immemorially existed, is admitted; and only consider what objections may be made to it in point of law, as for uncertainty, inequality, &c.—19 Geo. 3. C. B. *Pyke v. Dowling*. ii. 341

9. The court will not decree against a farm modus on the ground of rankness.—34 Geo. 3. Scacc. *Atkins v. Lord Willoughby de Brooke*. ii. 406

10. Issue directed to try a modus or rate-tithe, alleged to be payable in lieu of all tithes of certain lands, amounting, on computation, to 1s. an acre, notwithstanding the apparent rankness.

11. Rankness is only evidence against the immemoriality of the payment, and does not form an objection, in point of law, to a modus; for if the existence of the payment can be referred, its inequality is no objection.

12. The inference that a modus is rank from the magnitude of the payment, is much stronger when set up for particular articles, than in an agreement to pay so much an acre,

and *a fortiori* for a particular farm; for the value of a lamb, &c. at any period of history, may be easily ascertained, whilst the value of land in any particular parish cannot.—42 Geo. 3. Canc. *O'Connor v. Cook*. ii. 498

VI. 2. For Uncertainty.—See *Modus, bad*.

1. A modus alleged to be payable to the parson or vicar would be bad for uncertainty.—7 Jac. The case *de modo decimandi*. i. 189

2. Moduses of 1s. a year for every fat bullock agisted within the parish, in lieu of the tithes of agistment of barren and unprofitable cattle; and of 1d. for any small quantity of hemp sown every year by the occupier, held bad in law, for uncertainty.—8 Geo. 3. Scacc. *Boscawen v. Roberts*. ii. 228

3. Modus of 4d. by each occupier having lands cultivated by the plough by three or more horses, usually called a *plough*, in lieu of all small prædial tithes of all such lands so cultivated, bad for uncertainty as to the quantity of land.—50 Geo. 3. Canc. *Blackburn v. Jepson*. ii. 588

4. A modus of 3d. payable at Michaelmas, for each and every oxgang of land, containing sixteen acres of arable, meadow, and pasture, after the rate of seven yards to the pole or perch, in lieu of the tithes of grass made into hay, yearly arising within such oxgang, was holden to be ill pleaded, in not stating with particularity the quality and quantity of the land, and how, by whom, and when, and in lieu of what the payment was to be made; the modus was also held to be void for uncertainty, the oxgang being stated to consist of arable, meadow, and pasture, without any specification of the proportions, and nothing being expressed to be payable for an oxgang of arable only, or of arable and pasture only.—31 Geo. 3. Scacc. *Markham v. Laycock*. iii. 1364

VII. How and when destroyed or not.—See *Mill, Park, &c.*

1. A custom once settled to pay a certain sum for a tithe lamb is good, and cannot be destroyed by the parson's encroaching for more, or the tenants paying in kind.—23 El. *Fleming v. the Tenants of Dudley*. i. 82

2. Unity of possession does not destroy a modus, for the retainer is payment.—41 El. B. R. *Chambers v. Hanbury*. i. 142

3. An established custom cannot be affected by a modern temporary interruption.—M. 43 & 44 El. B. R. *Nowell v. Hicks*. iii. 1201

4. If land, covered by a modus, be leased, and the farmer pay tithe in kind, the modus shall not be destroyed against the lessor.—13 Jac. B. R. *Mascall v. Price*. i. 225

5. A money modus for the tithes of a park is not destroyed by disparking.—S. C.

6. If a man prescribe in *modo decimandi* for hay and grass in 40 acres of land, and the tenant convert it into a hop yard, or into tillage, the *modus* is gone, for when the *modus* is special for hay and grass only, by conversion of this to other uses, the *modus* is gone.—6 Jac. C. B. *Sharp v. Coult.* 1 Ro. Abr. 651.

7. If a man prescribe to pay 6s. 8d. for all manner of tithes of a park, and after the park is disparked, and converted into tillage and pasture land, the *modus* is gone by the alteration aforesaid.—*Spurdam's case.* 1 Ro. Abr. 651.

8. But if a man prescribe to pay 6s. 8d. for all manner of tithes arising from so many acres of land which contain the park, though the park be disparked, and the land converted into tillage, &c. yet the *modus* shall continue, because the prescription is in the soil and not in the park.—S. C. 1 Ro. Abr. 651.

9. *Moduses* may be included in a composition for tithes, and though it continue for forty years, the *moduses* shall not be extinguished.—6 Geo. Scacc. *Roe v. Bp. of Exeter.* i. 751

VII. How and where to be tried.—1. Common Law.

1. Where certain prescriptive payments were alleged, and that all and singular the parsons, rectors, &c. had used to accept the same; a traverse that *all and singular* had not accepted is bad, for the prescription ought to have been traversed.—41 El. B. R. *Green v. Hun.* i. 147

2. The trial of the custom *de modo decimandi* belongs to the common law.—19 El. *Case de modo decimandi.* i. 81

3. The parson may sue for a *modus* in the spiritual court, and prohibition will lie if he sue there for tithes in kind, because the *modus* has not been paid.—13 El. B. R. *Mascall v. Price.* i. 225

4. Where a *modus* is alleged which gives no recompense to the parson, a prohibition shall not go to the spiritual court, for it is not to be resembled to a *modus* which gives a recompense.—15 Jac. B. R. *Gose v. Barnes.* i. 261
——— *Portinger v. Johnson.* S. P. *ib.*

5. If a *modus* be admitted by the parson, it may be sued for in the spiritual court as well as the tithe in kind; but if the custom be denied, it must be tried at the common law.—16 Jac. C. B. *Scott v. Wall.* i. 296
2 Car. B. R. *Steward's case.* i. 353

6. Where a *modus* is confessed, and the only question is, as to the place where it is to be paid, no prohibition will lie to a suit in the spiritual court.—20 Jac. C. B. *Anon.* i. 325

7. A *modus* may be sued for in the spiritual court, but if it be denied, they cannot proceed, for they shall not try a prescription; the denial however of the custom must be alleged

positively and not by way of belief.—3 Car. B. R. *Clarke v. Prowse.* i. 358

VIII. How and where to be tried.—2. Chancery.

A. Bill.

1. A bill in chancery to perpetuate a *modus*, dismissed upon demurrer, though often allowed, both before and since.—4 Car. Canc. *Browne v. Thetford.* i. 369

2. A bill to establish certain customs of tithing set out therein, dismissed, the defendant denying the customs and alleging that they ought to be tried at common law by prohibition or such means.—5 Car. Canc. *Anon.* i. 370

3. A bill to have a rate tithe settled by decree against the impropiator, and to prevent multiplicity of suits, was dismissed by the Lord Keeper, although it was insisted that such decrees were frequent in the Exchequer; but he ordered two depositions to be made use of at law, as occasion required.—22 Car. 2. Canc. *Bush v. Rishley.* i. 482

4. Bill lies to perpetuate the testimony of witnesses to prove a *modus*. But *quære* if it will lie to establish a *modus*.—35 Car. 2. Canc. *Somerset v. Fotherby.* i. 541

5. A bill to establish a *modus* may be filed by any number or portion of the parishioners, and the rest of the parishioners need not be made parties; nor is it necessary that the bill should be filed on behalf of the other parishioners, or any reason be assigned for not making them parties. A bill may be filed to establish a *modus*, though the right is not questioned or disturbed.—22 Geo. 2. Canc. *Offley v. Fanshaw.* ii. 121

6. A bill to establish a customary payment in lieu of tithes does not lie upon a simple demand of tithes, without suit.

7. To a bill to establish a customary payment in lieu of tithes, the ordinary must be a party.—45 Geo. 3. Canc. *Gordon v. Simpson.* ii. 540

B. Injunction.

8. Injunction to restrain proceedings in the ecclesiastical court for tithes, on a bill suggesting a *modus*, but which was not admitted by the answer, refused. Injunction only granted upon the same grounds as a court of law grants a prohibition, viz. *propter triationis defectum*.—21 Geo. 2. Canc. *Rotheram v. Fanshaw.* ii. 111

9. The court of B. R. will not grant a prohibition unless the *modus* has been pleaded in the spiritual court and refused; and on the same ground that a court of common law grants a prohibition this court grants an injunction.—S. C.

C. Answer.

10. *Semb.* that the court will direct an issue to try a *modus*, though the *modus* proved be different from that set up by the answer, if the

court thinks that there is in fact a *modus*.—11 Geo. 2. Canc. *Williams v. Cullum*. ii. 64

11. *Modus* laid as having been from time out of mind paid out of every yard-land in the parish in lieu of tithes, and that it ought to be received yearly, and every year, as a *modus*, held sufficiently laid, though the answer did not state the *modus* to be payable on any particular day, or even as being payable annually. The *modus* was also considered sufficiently pleaded, though the answer did not state by whom it was payable; it appearing, from a subsequent part of the answer, from what persons the rectors had received it. Held, that a defence of *modus* may be stated disjunctively as a *modus*, or *composition*, payable from time immemorial.—21 Geo. 2. Canc. *Cart v. Hodgkin*. iii. 1240

12. The court will help an imperfection in the manner of setting out a *modus*, and will put a sense upon the words in which it is laid, if it appears that there actually is a *modus* or customary payment in lieu of any sort of tithe.—3 Geo. 3. Canc. *Mallock v. Browne*. ii. 197

13. To a bill for tithes, requiring the defendant to set forth to whom an alleged *modus* was payable, and what lands were covered by it, the defendant put in an answer, alleging a *modus*, stated in the answer to be payable by all occupiers of land in the parish. Exceptions to the answer, that the defendant had not set forth to whom the *modus* was payable, or the particular lands in the defendant's occupation for which he set up an exemption, allowed.—34 Geo. 3. Canc. *Coggan v. Lord Lonsdale*. iii. 1374

14. Though the court will aid a *modus* obscurely or imperfectly laid in an answer, it will not recast a *modus* which, as laid in the answer, is wholly disproved.—53 Geo. 3. Canc. *Scott v. Smith*. ii. 658

D. Issue.

15. A *modus* is not to be established against the parson without trial, if he desire it.—11 Geo. Canc. *Webber v. Taylor*. i. 802

16. Issue directed to try *moduses*: alleged variations in some of the payments appearing to be only irregularities in the collection.—50 Geo. 3. Canc. *Blackburn v. Jepson*. ii. 688

17. It is the duty of a court of equity to decree tithes in kind, when satisfied that the *modus* set up is either bad in law, or that it has not immemorially existed.

18. An issue is not to be directed unless there be reasonable doubt as to the fact, and when it depends on evidence, the effect of which can be better ascertained by a jury.—1 & 2 Geo. 4. Canc. *Short v. Lee*. iii. 1013

19. If a *modus* is laid in an issue directed out of the Court of Chancery, to extend over the whole of a parish, and the jury so find, the

Court of Equity will not send the case down to a new trial, because it appeared at the former trial that a hamlet, in the tithes of which neither plaintiffs nor defendants claimed any interest, was part of that parish, and was not covered by the *modus*.—5 Geo. 4. Canc. *Jones v. Carrington*. iii. 1131

20. Where, in a suit for tithes, an issue had been directed to try an alleged *modus*, and a trial had taken place, it was holden, that a presumed misunderstanding of a former case by the judge in equity, and also by the judge at law, on a question of pure dry law, where all the cases differed on the subject, was a sufficient ground for directing a new trial.—6 Geo. 4. Canc. *Williams v. Bacon*. iii. 1178

E. Decree.

21. Defendant to a bill for tithes puts himself upon one *modus* in his defence, and proves another. There must be a decree against him.—43 Geo. 3. Canc. *Warden and Minor Canons of St. Paul v. Morris*. ii. 516

22. Account of vicarial tithes decreed against a *modus*, the vicarage appearing to have been established by an endowment within the time of legal memory.—53 Geo. 3. Canc. *Scott v. Smith*. ii. 658

23. A defendant, insisting on a *modus* as an outner, must prove himself to have been such at the time his lands became titheable, his being so described in the bill is not sufficient.

24. A decree for tithes was expressly declared to be without prejudice to the right, where the party appeared to have failed in establishing a *modus* by mismanaging the suit.—52 Geo. 3. Canc. *Lake v. Skinner*. iii. 976

F. Costs.

25. A *modus* being found by two verdicts at law in favour of the plaintiff in equity; established with costs of the proceedings at law, but not in equity, the bill in equity being compared to a bill to perpetuate testimony, in which costs are never given against the defendant.—11 Geo. 2. Canc. *Clifton v. Orchard*. ii. 64

VIII. How and where to be tried.—3. Eschequer.

A. Bill.

1. Where distinct *moduses* are claimed there must be distinct suits by the several parties.—8 W. 3. Cam. Scacc. *Portman & 42 others v. Snow*. i. 620

2. The impropiator must be a party to a bill brought against his lessee, to establish a *modus*, for the court will not bind the inheritance unless the owner be before them.—6 Geo. Scacc. *Glanvil v. Trelawney*. i. 753

3. Cross bill to establish a *modus* dismissed, the cross bill stating the *modus* to be payable at *Lamas*, and the jury finding it to be paya-

ble at Easter.—6 Geo. 2. Scacc. *Goodwin v. Wortley.* ii. 33

4. Bill by some of the inhabitants of a parish against the parson, and against other inhabitants, to establish a modus, in lieu of tithe-hay arising in the parish, held to be proper, though it did not appear, that all the inhabitants of the parish were parties.—13 Geo. 2. Scacc. *Rudge v. Chapman.* ii. 82

5. On a bill to establish *moduses* alleged to be payable annually on the 31st of December, the evidence proved the payment to be at Easter; the defendant, however, declining an issue, the court established the *moduses* and gave the defendant his costs.

6. In a suit to establish *moduses*, the vicar is allowed his costs in respect to those *moduses* as to which he declines issues, and those *moduses* which are tried on issues, and found against him, are established without costs.—25 Geo. 3. Scacc. *Anderon v. Davies.* iii. 1326

7. It seems that a bill to establish *moduses* cannot be supported where there has been no attempt to enforce the payment of tithes in kind. The only bill which the occupier can maintain in such a case is, a bill to perpetuate testimony.

8. *Qu.* Whether the ordinary, though not patron, should not be a party to a bill to establish *moduses*.—28 Geo. 3. Scacc. *Conventry, Earl of, v. Burslem.* iii. 1360

9. A bill to establish a modus for every ancient farm, stating that the whole parish consisted of ancient farms, but not setting forth the abutments of each, is bad.—32 Geo. 3. Scacc. *Scott v. Allgood.* iii. 1372

10. If an action is brought by the lessee of tithes for subtraction, it is a sufficient ground for filing a bill to establish a *modus*.—35 Geo. 3. Scacc. *Lord Stawell v. Atkins.* ii. 419

11. Held, on a bill to establish a contributory *modus*, that it was not necessary to make all the persons who were liable to the contribution, or to be called on for the whole by the rector, parties, so as to bind them by the decree.—36 Geo. 3. Scacc. *Scarr v. Trinity College, Cambridge.* ii. 429

12. A bill will not lie to establish a modus which is not disputed.—37 Geo. 3. Scacc. *Wollaston v. Wright.* ii. 435

13. One owner of lands in a township may maintain a suit on behalf of himself and all other the owners, to establish a contributory *modus* for all the lands in the township.—37 Geo. 3. Scacc. *Chaytor v. Trinity College Cambridge.* ii. 437

14. In a bill to establish a modus against a dean and chapter, as rector, the ordinary and patron are necessary parties.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn.* iii. 894

15. The patron and ordinary are necessary parties to a bill to establish a *modus*: and

therefore where the defendants to a bill for tithes insisted on several *moduses* and customs, evidently bad in themselves, but which had been established many years before by a decree in a suit to which the patron and ordinary were not parties, the court held that such decree was not binding, and decreed an account of the tithes.—58 Geo. 3. Scacc. *Jenkinson v. Royston.* iii. 896

16. A bill to establish a modus must be filed by certain owners and occupiers of land within the parish, on behalf of themselves, and of all other owners, occupiers, &c. And the ordinary must always be a party.—58 Geo. 3. Scacc. *Hales v. Pamfret.* iii. 915

B. Injunction.

17. The spiritual court cannot try *moduses*, and therefore on a bill to establish *moduses*, and to restrain proceedings in a libel for tithes, injunction granted.—6 & 7 Geo. 2. Scacc. *Salmon v. Rake.* ii. 51

18. An injunction was granted to the spiritual court to stay a libel for tithes, where a *modus* was sought to be established.—11 Geo. Scacc. *Sir E. Blacket v. Finney.* i. 817

C. Answer.

19. Where the day of payment of a *modus* is omitted in the answer, the defect may be supplied by a cross bill.—10 Geo. Scacc. *Phillips v. Symes.* i. 800

20. A defendant by answer insisting on a modus, but omitting to state the day of payment, allowed to supply the omission by evidence. But in a cross bill to establish a *modus*, the day of payment must be expressly alleged.—6 & 7 Geo. 2. Scacc. *Gibb v. Goodman.* ii. 51

21. *Moduses* being improperly laid in the answer, were disallowed without prejudice.—11 Geo. 3. Scacc. *Townley v. Tomlinson.* ii. 258

22. *Semble*, that in laying a *modus* it is not sufficient in an answer to state, that the defendant is owner of an estate called H., without stating the number of acres, &c. of which it consists.—18 Geo. 3. Scacc. *Vye v. Duntze.* iii. 1272

23. *Semble*, that where a *modus* is alleged to be payable for a yard-land, without stating, "and so in proportion for any greater or less quantity than a yard-land," the *modus* is ill laid, and the court will neither allow the parties to amend, nor direct an issue in terms so as to obviate the objection.—22 Geo. 3. Scacc. *Willis v. Fowler.* iii. 1315

24. Where an answer alleges a *modus*, in lieu of a particular tithe, and from the evidence it appears that another *modus*, and not the one alleged, is payable in lieu of the tithe in question, the court cannot direct an issue to

try the latter *modus*; neither can it decree the tithes in kind in opposition to the strong evidence of a *modus*, and will therefore dismiss the bill.

25. When a *modus* is alleged generally, and without any qualification, the court cannot direct an issue to try a *modus* with a restriction or exception; for that would be a different *modus*; as, where the *modus* alleged was 1d. in lieu of tithe-grass, whether cut and made into hay; or eaten by barren and unprofitable cattle; and it was proved that payments had constantly been made for tithe of agistment of sheep, without regard to any usage or custom, and the *modus* therefore could not be payable for agistment of all barren cattle.—23 Geo. 3. Scacc. *Scott v. Fenwick*. iii. 1318

26. Where an entire *modus* was alleged to be payable in lieu of two species of tithes, and the division of the *modus* was not stated with precision, and depended upon the evidence of one witness only, the court declined to grant an issue.—25 Geo. 3. Scacc. *Warren v. Fisher*. iii. 1330

27. It is essentially necessary in stating a *modus* in lieu of agistment-tithe, to state the time covered by it.—25 Geo. 3. Scacc. *Warren v. Fisher*. iii. 1330

28. To a bill by the impropiator for tithe of lambs, the defendant set up a *modus* or customary payment, under the name of Lammas-tithe, in lieu of all tithes, besides the tithes of corn and grain, and besides such tithes as were due and payable to the vicar, the court held the *modus* not to be laid with sufficient certainty, for that the defendant ought to have stated the particular tithes due to the rector, for which the *modus* was payable, or that the tithe of lambs was a vicarial tithe.—30 Geo. 3. Scacc. *Nash v. Thorn*. ii. 359

29. Unnecessary words used in laying a *modus* which would make it indefinite, may be struck out.—30 Geo. 3. Scacc. *Ellis v. Saul*. ii. 360

30. Where moduses are alleged to be payable for several distinct species of lands, the lands should be clearly and distinctly described in the answer, or the court cannot direct issues.—30 Geo. 3. Scacc. *Croft v. Ayer*. iii. 1361

31. A payment set up in an answer as a *modus*, or composition real, is not bad for the uncertainty, as it was stated to have been immemorially paid.—34 Geo. 3. Scacc. *Atkins v. Hatton*. ii. 403

32. An answer setting up a *modus* in lieu of all tithes, or at least of tithe-hay, for particular lands, described, not by metes and boundaries, but by a map annexed to the answer, it was objected that the *modus* was not laid with sufficient certainty; but the court overruled the objection, and directed two issues to

try the *modus*, one as to all tithes, and the other as to tithe-hay.—35 Geo. 3. Scacc. *Clarke v. Jennings*. ii. 416

33. A general allegation in the answer, that the defendants could not be affected by the notice in any way, is not a sufficient intimation to the plaintiff that the defendants intended to rely upon the insufficiency of the notice.—51 Geo. 3. Scacc. *Bennett v. Neale*. ii. 630

34. Where a defendant in his answer states that a *modus* has been immemorially paid to the vicar in lieu of tithes, and the vicarage is shown to have been established and endowed within time of legal memory, the court will, notwithstanding the *modus* be so incorrectly laid, permit it to be restated for the purpose of taking issue to try the true *modus*, if an ancient payment in lieu of tithes has been proved.—55 Geo. 3. Scacc. *Prevost v. Bennett*. iii. 705

35. Where an answer to a bill for tithes sets up a *modus*, but does not clearly and explicitly state in respect of what titheable article the *modus* is laid, it is bad for uncertainty, and the omission is a substantial defect which no evidence can supply; but if it can be collected from the whole answer to what article it refers, it will be sufficient.—56 Geo. 3. Scacc. *Bourke v. Isaac*. iii. 737

36. A defence to a bill for tithes, of a district *modus*, where the defendants do not state on the record, and prove by evidence, an occupation in the district, fails.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

37. Moduses stated to be payable by each and every occupier of houses, gardens, farms, and lands, within and throughout the parish, or the titheable places thereof, except the occupiers of certain farms and lands described in the answer by name only, and of which, the farms and lands of the defendant are no part, holden to be ill laid for uncertainty.—58 Geo. 3. Scacc. *Wright v. Southwood*. iii. 913

38. It is a general rule of equity that if a defendant answer at all, he must answer fully; and, therefore, a defendant to a bill for tithes, insisting in his answer on a *modus* or composition in lieu of tithes, must nevertheless set forth an account of the titheable matters taken by him, or it will be good ground of exception.—60 Geo. 3. Scacc. *Whistler v. Wigney*. iii. 982

39. If a *modus* be laid, in an answer to a case resting on endowment, as covering several titheable articles, it must be proved to be payable for all of them, and if it be not, or if the witnesses state it to be in lieu of some of the articles, but whether it covers the others they do not know, the *modus* is not proved as laid, and cannot be acted upon; nor is the doubt a sufficient ground for the court to direct an issue, but an account will be decreed of all the

tithable matters said to be covered by the *modus*. Neither is the defence assisted, or the objected removed if the answer alleges that the defendants have been informed and believe that the payment is a *modus* covering all the articles (*speciation*), and the plaintiff reads that allegation on the hearing; because a plaintiff is not bound and concluded by reading out of answers allegations which he must necessarily read in order to furnish the court with the question at issue; and still less is the court bound by the plaintiff's reading such passages.—60 Geo. 3. Scacc. *Kempson v. Yorke*.

iii. 983

40. Where a *modus* is pleaded for a particular description of lands, it must be alleged in the answer, that the defendants occupy such lands.—12 Geo. 4. Scacc. *Stuart v. Greenall*.

iii. 1040

D. Plea.

41. If a *modus* be alleged only by way of answer to a bill, the defendants must answer to all parts of the bill; but if it be pleaded, they need not answer to any other matter.—1658. Scacc. *Langham v. Sparstowe and others*. i. 429

42. Although a *modus* be pleaded, yet quantities and values must be set forth, for tithes may only be in the personal knowledge of the party, who may die before examination.—6 Geo. Scacc. *Gumley v. Fontleroy*. i. 754

43. Where tithes in kind had been decreed by the court of exchequer, after a verdict upon an issue to try certain moduses; but, upon another issue afterwards upon a bill preferred in the court of chancery, these moduses were established by a decree founded upon a verdict, a plea of such a decree was allowed to a subsequent bill in the court of exchequer for tithes in kind.—11 Geo. Scacc. *Geale v. Wyntour*. i. 806

44. The plea of a former decree for the payment of tithes, where a *modus* and the lands alleged to be covered by it, were imperfectly stated, so that the court could not direct an issue, is not a good bar to a bill brought for establishing the *modus*.—25 Geo. 3. Scacc. & Dom. Proc. *Collins v. Gough*. ii. 349

E. Tender.

45. Where the defendant in a tithe cause sets up a *modus*, and is desirous of protecting himself from costs, he should move for an order that the plaintiff may accept the sums admitted to be due by the answer, or proceed at the peril of costs, and the court will notice the tender by minute. The motion may be made without notice, and may be sustained without paying the amount into court.—1 & 2 Geo. 4. Scacc. *Davis v. Moseley*. iii. 1052

F. Issue.

46. Issue directed to try a *modus*, though it

was not proved exactly as laid in the bill, the *modus* being laid for every tenth lamb; payable on Monday next after Midsummer-day after the lambs fallen, except such as were not alive on Midsummer-day, whilst it was proved to be for such as were alive on Monday next after Midsummer-day.—8 Geo. 2. Scacc. *Laithes v. Christian*. ii. 59

47. Rankness of a *modus* is not a question of law, but of fact, to be tried by a jury.—16 Geo. 3. Scacc. *Bedford v. Sambell*. iii. 1247

48. On a bill by a vicar for tithes, the defendants, by their answer, alleged several customary payments in lieu of tithes for their farms as ancient farms, and afterwards filed a cross bill to establish the payments. On the hearing, they proved other customary payments, which were general payments, and not confined to their particular farms. The court directed issues to try the moduses as proved, and dismissed the cross bill, holding, that as it did not contain any prayer adapted to the evidence given in support of it, no decree could be made on it: but that as to the vicar's bill, an indorsement on the *postea* would enable the court to decree what he was entitled to.—19 Geo. 3. Scacc. *Williams v. Williams*. iii. 1276

49. The court will not establish customs of tithing without a trial at law, unless an issue is waived.—19 Geo. 3. Scacc. *Robinson v. Barroby*. iii. 1282

50. Rankness of a *modus* is a question of fact and not of law.—20 Geo. 3. Scacc. *Twells v. Welby*. iii. 1286

51. A plaintiff withdrawing issues directed to try certain moduses, held liable to the payment of costs; though the moduses were apparently rank, and the expense alone deterred the plaintiff from trying the issue.—50 Geo. 3. Scacc. *Brookland v. Golding*. ii. 584

52. The court will not direct an issue to try a composition real, where the defendant has by his answer only alleged a *modus*.—61 Geo. 3. Scacc. *Bennett v. Neale*. ii. 630

53. In this suit, which raised a question of the weight of conflicting evidence, the plaintiff, in support of his claim of the tithe for hay in kind, made out a clear and conclusive case. That was opposed by evidence, some of which was of a very extraordinary nature, principally recitals and agreements for compositions, wherein two recent rectors admitted that there were moduses for hay; yet they and the compounding parties, the occupiers, agreed to a composition for the full value. There was also evidence given of a former suit in the ecclesiastical court, in which a prohibition had been issued, some few memoranda in old books, making mention of moduses in a very loose way; and some receipts for tithes and moduses indiscriminately. The Lord Chief Baron held, after considerable doubt, that the evidence, ex-

traordinary as it was, and against so strong a case, was yet such, as to make it necessary that there should be an issue to try the nature and character of the money-payments.—1 Geo. 4. Scacc. *Taylor v. Cook.* iii. 1005

G. Decree.

54. Where a modus of twenty shillings a year was alleged and one of forty shillings proved, tither were decreed.—4 W. & W. Scacc. *Platts v. Cuthorn.* i. 575

55. A party can only succeed in his suit *secundum allegata probata*, and, unless the case proved corresponds with the case laid, the suit cannot be supported, though the party makes out in evidence a case which might be a good one if it had been properly laid in the pleadings: and, therefore, where in the answer to a bill for tithes, certain customary payments were alleged, and some payments, which, from their smallness, appeared to be customary, were shown in evidence, without making out the moduses as laid, the court of exchequer, without directing an issue to try the existence of any customary payments, decreed for the plaintiff, and the decree was affirmed by the lords.—34 Geo. 3. Scacc. & Dom. Proc. *Baker, Appr. v. Veyne.* ii. 699.

H. Costs.

56. On a bill to establish a modus, which had been already found on an issue directed in another cause, the defendant by answer submitting to the modus, it was accordingly decreed to be established, but the plaintiff was decreed to pay the defendant's costs.—32 & 33 Geo. 2. Scacc. *Berners v. Hillett.* ii. 170

57. On a bill to establish moduses, the defendant disputing the moduses, but declining to try them in an action at law, they were severally ordered to be established, and the defendant was enjoined from proceeding in the spiritual court for tithes in kind, and was decreed to pay the plaintiff's costs of this suit. *Sed quare*, as to the propriety of decreeing the defendant to pay costs.—13 Geo. 3. Scacc. *Cleaves v. Knyfton.* ii. 284

58. An issue being directed to try a modus, the plaintiff, the vicar, declined to try it, and suffered the modus to be taken *pro confesso*; he was decreed to pay the costs.

59. Costs do not invariably follow the result of an issue, and therefore, where a modus was established by a jury, but, from the circumstances of the case, the court considered that the plaintiff had strong probable ground of suit, no costs were given on either side.

60. An account of tithe hay being decreed,

the defendant appealed from so much of the decree as directed the account with respect to lands in the township of S. and the decree was, to that extent, ultimately reversed: pending the appeal, the plaintiff took the account as to all the lands, including those in the township of S. the court, on application, declining to restrain him from so doing. On an application for costs, the court held, that it was convenient that the whole account should be taken at the same time, and refused to make the plaintiff pay the costs of the account as to the township of S. but at the same time did not allow him any costs in respect of so much of the account.—6 Geo. 4. Scacc. *Drake v. Smyth.* ii. 1167

VIII. How and where to be tried.—4. Spiritual Court—See Spiritual Court.

1. Where the modus does not come in question in the spiritual court, but to whom to be paid, no prohibition lies.—28 & 29 EL. B.R. *Bush v. Hunt*, or the Vicar of *Pancras* case. i. 90.

2. If a copyholder of the king allege a modus, it shall be tried in the exchequer and the spiritual court prohibited.—7 Jac. Scacc. *Anon.* i. 191

3. Where several moduses are alleged, several prohibitions shall go; where divers are sued for one modus, but one prohibition.—16 Car. C.B. *Anon.* i. 401

4. If one libel for a modus, if the spiritual court will allow it, they may try it.—20 Car. 2. B.R. *The Bishop of Lincoln v. Smith.* i. 478

5. If upon issue joined in prohibition a modus be found, though different from that laid, yet no consultation shall go, as it appears that tithes ought not to be sued for in specie.—21 Car. B. R. *Anon.* i. 480

6. The Spiritual court cannot try a modus because the prescription differs; but if the question be whether the modus has been paid or not, they may try.—9 W. 3. B. R. *Godfrey v. Matthews.* i. 624

7. A modus is a good suggestion to stay a suit in the spiritual court for tithes in kind, for the suit there ought to be for the modus.—4 Ann. B. R. *Startup v. Doddridge.* i. 666

8. If a modus be pleaded in the spiritual court, and refused, a prohibition goes.

9. A man may libel there for a modus, or for tithes due by custom; but if the modus or custom be denied, prohibition will lie.—2 Geo. Scacc. *Hucks v. Phelps.* i. 724

10. If a modus be insisted upon in the spiritual court, it has no jurisdiction unless the modus be admitted.—4 Geo. Scacc. *Offley v. Whitehall.* i. 732

IX. Acre.—See *Modus, Parish, Hay, &c.*

1. If a man prescribes to pay 1d. or thereabouts for the tithes of every acre of arable land, it is not a good prescription for the uncertainty.—7 Jac. *Allen's case*. 2 Ro. Abr. 965.

2. A custom for all occupiers of marsh meadow or pasture land not living in the parish, to pay 12d. per acre for the tithe of sheep and cattle depastured, and for tithe hay, held good.—27 Car. 2. Scacc. *Hatcher v. Ridley*, i. 506

3. Qu. Whether a custom that all farmers of land within a parish, living out of it, should pay 4d. an acre in full satisfaction of all tithes for every acre of ancient pasture ground be good?—29 Car. 2. Scacc. *Asfordby v. Newcomen*. i. 511

4. One shilling per acre for all pasture ground in a parish, decreed.—36 Car. 2. Scacc. *Ete v. Wightwick*. i. 543

5. A *modus* of 2d. an acre for all hay, covers clover, though a new introduction.—6 W. & M. Cam. Scacc. *Pocock v. Cole*. i. 583

6. A custom to pay 4d. for every acre of marsh land in discharge of all small tithes due to the vicar for marsh land and upland is good.—6 W. 3. Scacc. *Smelton v. Bridges*. i. 590

7. *Moduses* of 5s. per acre for winter corn, and 4s. per acre for summer corn, and 3s. per acre for meadow, too rank.—2 Geo. Scacc. *Benson v. Watkins*. i. 721

8. A *modus* of one shilling per acre for marsh land, and four pence per acre for upland, in lieu of hay and all small tithes (except hops) within a parish, allowed.—9 Geo. Scacc. *Bate v. Hodges*. i. 787

9. In answer to a bill for tithes, the defendants say, that all the lands in the parish are distinguished either as Upland or as Marsh Land: and that there are *moduses* of one shilling an acre for the Upland, and four-pence an acre for the Marsh Land, payable to the rector on every Michaelmas day, excepting when the said lands are sown with corn, grain, hemp, flax, or planted with hops, in lieu of all tithes of hay, pasturage and small tithes arising thereon, excepting the tithes of hemp, flax, and hops; upon issues directed, the *moduses* were found, and the bill dismissed with costs.—12 Geo. Scacc. *Bate v. Howland*. i. 819

10. *Semble*, that a *modus* of 2s. 6d. an acre for corn-lands is rank.—27 Geo. 3. Canc. *Bishop v. Chichester*. iii. 1354

11. A *modus* of 1d. for every acre of reed ground hooked, cropped, or mown in the year, good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

X. Agistment.

1. The court seemed inclined to think that a custom, that every one keeping milch cows should, in satisfaction of agistment tithe of fattening cattle, and of the tithes of milk, butter

and cheese, pay nine cheeses (being a collateral thing) was bad. *Edm.* said he did not believe it had ever been decided that a payment in money, which differed from this, should not be a discharge for different things.—13 Jac. B. R. *Mascall v. Price*. i. 225

2. Where one prescribed that no one keeping milch cows ought to pay agistment tithe of fattening cattle, but in satisfaction thereof, and of the tithes of milk, butter, and cheese, to pay nine cheeses, but did not allege that he kept milch cows, a consultation was granted.—13 Jac. B. R. *Mascall v. Price*. A. i. 225

3. A customary payment of 3s. for the herbage of each pack-horse and saddle horse fed within a parish decreed.—19 Car. 2. Scacc. *Tabor v. Barker*. i. 457

4. A custom for all occupiers of marsh, meadow, or pasture land, not living in the parish, to pay 12d. per acre for the tithe of sheep and cattle depastured, and for tithe hay, held good.—27 Car. 2. Scacc. *Hatcher v. Ridley*, i. 506

5. A *modus* of 1s. in the pound of the yearly rent of the land, in lieu of agistment tithe, is void.—10 Geo. Scacc. *Harrison v. Sharp*, i. 801

6. *Modus* of 12d. in the pound, to be paid yearly, according to the value of the lands, for all cattle depastured, whether profitable or unprofitable, held good, and not a *modus* of a part of the tithe for the whole.—25 Geo. 2. Canc. *Forbes v. Phelps*. iii. 126

7. A custom for every householder inhabitant within the parish, to pay 2d. at Easter by the name of hearth-silver, garden-silver, shot and waxen silver, in satisfaction of the tithe of the produce of any garden, yard, or orchard, occupied in the parish by such householder inhabitant, and of all woods, cuttings, and loppings, cut in the year, upon land in the parish in his occupation, and also of the agistment-tithe, is good.—26 Geo. 3. Scacc. *Bennett v. Read*. iii. 1338

8. A *modus* in lieu of tithe hay and herbage, does not cover turnips eaten by cattle.—29 Geo. 2. Scacc. *Kirshaw v. Isles*. ii. 149

9. *Modus* of 10d. a score, for agistment of sheep, held bad.—56 Geo. 3. Scacc. *Mytton v. Harris*. iii. 1291

10. A *modus* of a certain sum of money in lieu of the tithe of grass, whether mown or made into hay, or eaten by barren and unprofitable cattle, sent to an issue, there being evidence of its having been paid as for the tithe of agistment; notwithstanding the tithe of agistment is of late introduction.—58 Geo. 3. Scacc. *Williamson v. Lord Londale*. iii. 870

11. The inhabitants to pay the parson yearly, for every acre of fed ground in the parish, for herbage 1d. or the fall at the parson's election, bad.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

XII. Apples

1. A *modus* of 3*d.* for every hogshead of cider or perry in lieu of all apples and pears void, but decreed for each hogshead.—31 Car. 2. Scacc. *Simpson v. Tucker.* i. 525
2. A prohibition was granted upon a suggestion of a custom to pay a *modus* of a great for every hogshead of cider, or 2*s.* per annum in lieu of all tithes of all grain and fruit growing in any orchard.—2 Jac. 2. B. R. *Hill v. Harris.* i. 550
3. A *modus* of 1*d.* per hogshead of cider or perry in lieu of the tithes of the apples and pears of which such cider and perry is made, held good.—3 W. & M. Scacc. *Slaughter v. Ley.* i. 583
4. An apple-garden 1*d.* for all apples in the garden or orchard held good, *quære* if it extend to new.—6 W. & M. Cam. Scacc. *Pocock v. Cole.* i. 583
5. A *modus* of 4*d.* for a hogshead of cider decreed.—13 W. 3. Scacc. *Conyers v. Sweet-hand.* i. 642
6. A *modus* of 4*d.* a hogshead for all apples made into cider, and of 1*d.* for all other apples, established.—1 Ann. Scacc. *Pidsley v. Carew.* i. 649
7. A *modus* of 2*d.* for every hogshead of cider made of apples grown in the parish, in lieu of tithes of such apples and cider, established.—10 Ann. Scacc. *Teatock v. Portbury.* i. 697
8. *Moduses* of 8*d.* for every hogshead of cider, and 1*d.* for board of apples, allowed.—6 Geo. Scacc. *Roe v. B. of Exeter.* i. 751
9. *Moduses* of 2*d.* for every hogshead of cider or perry in lieu of all tithes in kind of the apples and pears of which they are made, decreed.—11 Geo. Scacc. *Gould v. Pearce.* i. 806
10. *Moduses* of 2*d.* for a hogshead of cider, and so in proportion; and 2*d.* for every board of apples; admitted.—11 Geo. Scacc. *Reynall v. Wills.* i. 808
11. 2*d.* per board for all apples kept by every occupier a good *modus*.—12 Geo. Scacc. *Reynell v. Ackland.* iii. 1235
12. A *modus* of 5*d.* a pipe for all fruit made into cider, and 10*d.* after that rate for a greater or less quantity, established.—9 Geo. 2. Scacc. *Colchester v. Russell.* ii. 61
13. *Modus* of a hen, called a *loak* hen, on St. Thomas's day yearly, in lieu of hearth-wood, honey, and apples, established after verdict.—11 Geo. 2. Scacc. *Burslem v. Spencer.* ii. 65
14. Issue directed to try a *modus* of 2*d.* per hogshead of cider, in lieu of tithes in kind of the apples used in making such cider.—3 Geo. 3. Canc. *Mallock v. Browse.* ii. 197
15. *Moduses* of 3*d.* for every hogshead of cider, and 1*d.* for fruit in lieu of tithe of apples, pears, and other fruit, bad.—1 & 2 Geo. 4. Canc. *Short v. Lee.* iii. 1013

XII. Beasts.

1. There is no uncertainty in a *modus* of 12*d.* for a fat beast; and 6*d.* for a lean beast, the distinction being well established among farmers.—27 Geo. 3. Canc. *Bishop v. Chichester.* iii. 1854

XIII. Bees.

1. A *modus* of 1*d.* for a swarm of bees.—11 Geo. Scacc. *Smithson v. Dodson.* i. 801
2. A *modus* of 2*d.* for every hive of bees, in lieu of tithes of honey and wax, decreed.—11 Geo. Scacc. *Gould v. Pearce.* i. 806
3. A *modus* of 2*d.* in lieu of all tithes of bees, honey and wax.—11 Geo. Scacc. *Reynall v. Wills.* i. 808

Bigg, see M. Cow.

Bovate, see M. Oargang.

XIV. Calves.—See M. Cows.

1. For a suggestion, it was said, that for calves, they used to pay within the said parish, &c. two-pence for the milk of every cow in satisfaction of calves: and the proofs were, that there was such a usage for all the lands, except five farms; and for this cause it was held he had failed in his prescription, for it may be these lands were parcel of the five farms; but if it had been proved, that the lands were not parcel, it had been otherwise. And for this cause a consultation was granted.—30 El. B. R. *Bennett v. Shortwright.* i. 94
2. A *modus* for calves under seven, for every calf reared, 1*d.*; for every one killed, 1*d.*; for every one sold, the tenth penny; and if seven or above, to give one in satisfaction of tithes of them, and of all dry cattle, was held bad; for if no calves, but dry cattle, nothing is paid; and it is uncertain whether there will be calves or not; so it is an uncertain thing for a certain duty.—30 El. B. R. *Perry v. Soam.* i. 96
3. If there be a custom to pay for three calves 1*d.* and if seven one calf, the parson shall not have a calf where there were three in one year, and four in another, he having neglected to take tithe of the first three.—3 Car. B. R. *Anon.* i. 360
4. It is a good *modus* for the tithes of calves to pay a calf for the tithe if he have seven in one year, and if he have under seven, to pay 1*d.* for every calf for the tithe, and if he sell any calf, that he shall pay the tenth of that for which he sells it.—14 Jac. *Lee v. Collins.* 1 Ro. Abr. 648.
5. A *modus* of 4*d.* for a calf, held good.—17 W. 3. Scacc. *Rodd v. Biskopp.* i. 613
6. A *modus* of 4*d.* for a calf decreed.—13 W. 3. Scacc. *Conyers v. Sweet-hand.* i. 642
7. A *modus* of 1*d.* for every calf, and the tenth of the price for which such calf has been sold, good.—5 Ann. Scacc. *Hockmore v. Richards.* i. 681

8. A *modus* of $\frac{1}{2}d.$ for every calf where the parishioner has under the number of seven fallen in any one year, which shall be reared; if killed $1d.$ established.—10 Ann. Scacc. *Isaack v. Portbury.* i. 697

9. A *modus* of $8d.$ for every calf.—11 Geo. Scacc. *Reynall v. Wills.* i. 808

10. A *modus* of $1\frac{1}{2}d.$ for each calf weaned for the pail in the parish, allowed.—13 Geo. Scacc. *Thompson v. Holt.* i. 826

11. *Modus* of a halfpenny in lieu of each calf, held good.—5 Geo. 2. Scacc. *Brinklow v. Edmonds.* ii. 30

12. A *modus* of a halfpenny for every calf, weaned and bred up in the parish, in full for the tithe of such calf, established.—9 Geo. 2. Scacc. *Colchester v. Russell.* ii. 61

13. *Modus*, disproved by the evidence, for every cow, producing a calf, one penny halfpenny; or if no calf, one penny: the evidence proving a higher payment beyond a certain number, account of tithes decreed.

14. *Modus* supported by the evidence in part, not as to the rest, and capable of distinction, viz. so much for every calf, up to seven, proved; and different sums proved from those laid as to other numbers, void *in toto*.—50 Geo. 3. Canc. *Blackburn v. Jepson.* ii. 588

15. *Modus* "of $1\frac{1}{2}d.$ for every calf fallen or dropt in the parish, in lieu of the tithe of such calf," is not proved, if the evidence add a qualification to the custom: as, if the proof be, that where such calf shall be sold within the first year after being calved, a further sum, after the rate of $1s.$ in every $10s.$ of the price at which the calf was sold, is to be paid to the vicar.—57 Geo. 3. Scacc. *Leathes v. Newitt.* iii. 841

16. A *modus* that where there were more calves than 7 and under 14, one calf had been paid; where more than 14 and under 21, two calves; and where more than 21 and under 28, three calves had been paid: was held not to be supported by evidence, that instead of one, two and three calves, $7s. 6d.$, $15s.$ and $1l. 2s. 6d.$ had been paid; and the court refused to direct an issue.—27 Geo. 3. Canc. *Bishop v. Chichester.* iii. 1354

Cattle, see *M. Beasts.*

Chickens, see *M. Eggs.*

Cider, see *M. Apples.*

XV. Clover.

1. A *modus* of $2d.$ an acre for all hay, covers clover, though a new introduction.—6 W. & M. Cam. Scacc. *Pocock v. Cole.* i. 583

2. The tithe of clover is covered by a *modus* for tithe-hay.—21 Geo. 2. Canc. *Cart v. Hodgkin.* iii. 1240

3. A parochial or vicarial *modus* of $2d.$

a cover for every cover of clover, and so in proportion, found by a jury, concurrently with another *modus* of $2d.$ yearly for every day's math of hay, and so in proportion, is good.—5 Geo. 4. Scacc. *Davies v. Moseley.* iii. 1147

Colts, see *M. Fools.*

Common, see *Common.*

XVI. Corn.

1. A measure of oatmeal in lieu of the tithe of corn and grain, is a good *modus*.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn.* iii. 894

XVII. Cows.—See *M. Milk.*

1. A *modus* of $12d.$ for a milch cow, and $6d.$ for every barren cow in lieu of all tithes arising from or by reason of such cows, sent to be tried on an issue.—6 W. 3. Scacc. *Morgan v. Holt.* i. 606

2. *Moduses* of $4d.$ for every cow for tithe of milk and other dues, except the calf, and $4d.$ for every calf, held good.—7 W. 3. Scacc. *Rodd v. Bishop.* i. 613

3. A *modus* of $1s.$ for each cow in lieu of tithes of milk and calf of such cow established. 1 Ann. Scacc. *Pidsley v. Carew.* i. 649

4. And of $6d.$ for each heifer's milk and calf.—S. C. *ib.*

5. A customary payment of six-pence for each milk cow kept by a parishioner, though milked out of the parish, decreed.—9 Ann. Scacc. *Wright v. Elderton.* i. 694

6. A *modus* of $\frac{1}{2}d.$ for every veere cow, in discharge of tithes of such cow, established.—10 Ann. Scacc. *Isaack v. Portbury.* i. 697

7. *Moduses* of $3d.$ for a new milch cow, and $2d.$ for a farr milch cow; and the left shoulder of every calf fallen or killed, but if sold, the tenth penny of the value it sold for.—3 Geo. Scacc. *White v. Keate.* i. 730

8. *Moduses* of $17d.$ for the tithe of the milk and calf of every cow; $11d.$ for the milk of every milch cow not having a calf; $13d.$ for the milk and calf of every heifer; payable at Michaelmas, allowed.—6 Geo. Scacc. *Roe v. Bp. of Exeter.* i. 751

9. The cow-keepers in the parish of Downham, in the Isle of Ely, pay to the rector $2d.$ a year for every new milch cow; $1\frac{1}{2}d.$ a-year for every old milch cow, at Easter, and the whole morning's milk of all the cows on Whitsun Monday; the owners to milk the cows and carry the milk to the parsonage house in lieu of the tithe-milk.—6 Geo. Scacc. *Jones v. Cawthorne.* i. 758

10. *Moduses* of $12d.$ for the milk of a cow, and of $6d.$ for every calf killed and sold, are rank, and void.—7 Geo. Scacc. *Franklyn and others v. The Master and Brethren of St. Cross and others.* i. 768

11. *Moduses* of 8d. for every cow, and 4d. for every heifer, in lieu of the tithe of milk and calves of such cow and heifer, were allowed.—10 Geo. Scacc. *Phillips v. Symes*. i. 800
12. A *modus* of 1½d. for every milch cow.—11 Geo. Scacc. *Smithson v. Dodson*. i. 801
13. *Moduses* of 4d. for every milch cow, in lieu of milk and calf or calves of such cow; and of 2d. for every barren cow in lieu of milk and pasture, decreed.—11 Geo. Scacc. *Gould v. Pearce*. i. 826
14. 2d. for every milch heifer depastured in the parish; 8d. for every calf; 2d. for every cow or heifer which misses calf.—11 Geo. Scacc. *Reynall v. Wills*. i. 808
15. *Moduses* of 2d. for every new milch cow, and 1½d. for every old milch cow depastured in the common fields, allowed.—13 Geo. Scacc. *Thompson v. Holt*. i. 806
16. A *modus* of 1d. for every milch cow depastured in the parish in lieu of tithe-milk of such cow, established.—9 Geo. 2. Scacc. *Colchester v. Russell*. ii. 61
17. A *modus* of 6d. for every cow depastured in the parish, payable at Michaelmas in lieu of tithes of milk and calves, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts*. ii. 228
18. Issues directed to try *moduses* of 3d. a-year for every cow, and 6d. for every calf, in lieu of the tithes of cows, calves, and milk.—56 Geo. 3. Scacc. *Prevost v. Bennett*. iii. 726
19. A *modus* of 4d. for every cow, in lieu of the tithe of milk, is not supported by proof of a *modus* for every cow with calf.—56 Geo. 3. Scacc. *Bertie v. Beaumont*. iii. 739
20. *Modus* of 1s. for a milch cow, in lieu of the tithe of milk of such cow, sent to an issue. 57 Geo. 3. Scacc. *Leathes v. Newitt*. iii. 841
21. A *modus* of 5s. for every ten calves, where there happens to be ten, in lieu of the tithe of such calves, and also of the tithe milk of the cow belonging to such calves, called *renew* cows, or cows having had each a calf within the year, preceded by a *modus* of three-halfpence for every cow called a *renew* cow, or a cow that has had a calf within the year, and is full of milk, in lieu of the tithe of the milk of such cow, cannot be supported, being inconsistent. The latter standing alone would also be objectionable, because it is not stated what is to be paid for the number of calves under five, or between ten and five.—57 Geo. 3. Scacc. *Layng v. Yarborough*. iii. 854
22. *Modus* of a penny a cow for milch cows *summered* on lands within the parish, disallowed for uncertainty.—58 Geo. 3. Scacc. *Rumney v. Beale*. iii. 865
23. A custom (to pay) for every milch cow 2d.; and for every heifer, or heifer, that has had but one calf, 1d. for and in lieu of milk, and all profit arising by such cow or heifer, except the calf, good, notwithstanding it be not

accurately laid, the redundant words at the end being rejected as surplusage.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

24. *Moduses* of 4d. for every milch cow and calf, and 3d. for every heifer and calf, in lieu of tithe of calves and milk, bad.—1 & 2 Geo. 4. Canc. *Short v. Lee*. iii. 1013

25. *Modus* of 7d. for every milch cow in lieu of the tithe of the calf, and of the milk of such cow; 5d. for every heifer, in lieu of the tithe of the calf, and of the milk of such heifer; held legal, and issues directed to try them. 5 Geo. 4. Scacc. *Holwell v. Blake*. iii. 1174

Cowhite, see *M. Milk*.

Ducks, see *M. Eggs*.

XVIII. Eggs.

1. *Periam* said he had known a bushel of eggs paid in satisfaction of all the eggs of a town.—31 El. C. B. *Bird v. Adams*. i. 97

2. It is a good *modus* for tithe of eggs to pay in Lent 30 eggs for all tithe of eggs.—14 Jac. B. R. *Lee v. Collins*. 1 Ro. Abr. 648.

3. A *modus* of 1d. in lieu of all tithes of eggs of all poultry (except geese titheable in kind by their young).—11 Geo. Scacc. *Reynall v. Wills*. i. 808

4. *Modus* of three eggs for every cock and drake, and of three eggs for every hen and duck, in lieu of eggs, chickens, and ducks, established.—5 Geo. 2. Scacc. *Brinklow v. Edmonds*. ii. 30

5. A *modus* of two eggs for every cock, and one egg for every hen, payable at Easter, established.—11 Geo. 2. *Burslem v. Spencer*. ii. 63

6. For every hen or duck two eggs; and for every cock or drake, either of them, three eggs, bad.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

Estovers, see *M. Fuel*.

XIX. Farm.—See *Parson and Vicar—Modus, Exchequer*.

1. A *modus* of one acre of wheat, and one acre of barley, standing upon the ground and ready for harvest, in full satisfaction of all tithes of corn and hay arising upon a farm, held good.

2. When some lands had been taken from certain demesne lands alleged to be covered by a *modus*, and some exchanged, the court of exchequer ordered a commission to ascertain the alterations.—19 Car. 2. Scacc. *Kent v. Webb* and others. i. 454

3. The court took notice of the greatness of certain farm *moduses* in respect of the yearly values, and ordered that they should be attended with precedents, where great *moduses* near the value of the tithes had been referred to trials at law: they afterwards decreed the

payment of the moduses without costs on either side.—36 Car. 2. Scacc. *Troutbeck v. Lawton*. i. 542

4. A farm modus denied on the ground that the greatness of the sum was evidence that it could not have been an ancient agreement.—

36 Car. 2. Scacc. *Cotterell v. Athrop and others*. i. 548

5. A modus of 2s. in the pound, according to the yearly value of the farm, held good.—

2 W. & M. Scacc. *Dodderidge v. Startop*. i. 566

6. A modus of 20s. per ann. for the small tithes of land worth £26 per ann. is good.

7. £30 in lieu of all small tithes was held too great.—8 W. 3. Scacc. *Browne v. Chaplin*. i. 617

8. A modus of £8 for a farm of £80 held good, for a modus may be better than the tithe.

9 W. 3. Cam. Scacc. *Edge v. Oglander*. i. 628

9. A modus of twenty-six pounds a-year for a farm allowed.

10. If a parson would avoid a farm modus, it is incumbent on him to prove the value of the farm.

11. A farm modus is not void on the face of it, in respect of its largeness.—5 Ann. Scacc. *Bishop v. Arundel*. i. 664

12. Payment of a farm modus to the vicar in lieu of all tithes, rectorial as well as vicarial, held good.—6 Ann. Scacc. *Bulmer v. Bircham and others*. i. 682

13. Moduses for the small tithes of farms set aside, it appearing that the value of them in kind did not amount to more.—5 Geo. Scacc. *Lloyd v. Small*. i. 746

14. A farm modus declared to be rank without an issue.—6 Geo. Scacc. *Loveday v. Moorer*. i. 760

15. A modus of four shillings at Easter, payable in lieu of tithe-hay of a farm, disallowed.—9 Geo. Scacc. *Burwell v. Coates*. i. 788

16. Moduses of 1d. in lieu of the tithe-hay growing on sixty-eight acres, two roods, thirteen perches, allowed; and of 26s. 8d. for hay, small tithes and Easter offerings on 625 acres; although it was objected that they were uncertain; could not be supposed to have a reasonable commencement, and were liable to fraud; for if all the land were turned into meadow it would pay no more.—10 Geo. Scacc. *Finch v. Masters*. i. 799

17. Modus of £4. 10s. per annum, for a farm of the annual value of £30, held good.—4 Geo. 2. Scacc. *Kennedy v. Goodwin*. ii. 28

18. A modus, amounting to as much as a manor itself was worth in the time of Queen Elizabeth, is too rank.—18 Geo. 2. Canc. *Ekin v. Pigot*. ii. 95

19. It has been said that the moduses are too rank, and that ten shillings for hay par-

ticularly are so, because the modus for the tithes of corn is but three and thirty shillings. No argument at all is to be collected from thence, because less might be in tillage at that time than there is now. The objection is stronger as to the five pounds for the privy tithes of the demesnes; undoubtedly it is a pretty large sum, and it has been insisted the whole value of the manor is but fifteen pounds, as appears from an ancient survey in Henry the 8th's time, where it is called *firm* of Shipton, which implies a rent reserved. But I can no more infer from thence that this was the value of the rack rents of the manor in Henry the 8th's time, than I can at present the real value of a bishop's manor from the rent reserved in a lease of it.

In a case that came by appeal to the house of lords in Lord TALBOT's time, relating to the parish of Chedingfold in the county of Surrey, the lords reversed a decree of the court of exchequer for being too hasty in rejecting a modus as too rank, and said, it was taking too much upon them to determine it to be no modus upon such kind of evidence, which was not conclusive evidence against a modus, and directed an issue to try it.—20 & 21 Geo. 2. Canc. *Ekins v. Dormer*. ii. 108

20. As to the objection to the modus, arising from the nature of it, as too rank, several indeed have been overturned on this point; but the distinction is material, that a modus may be overturned for rankness, even at the hearing of the cause, where it is for a specific thing, as a lamb, &c. because the price of a thing may be found from history and ancient records: but that is an objection from a fact, which, because it appears with such a degree of certainty, the court determines without sending it to be tried; but where it is not for a specific thing, there are several other circumstances to be taken into the consideration of rankness, as the difference of value in the course of time.—21 Geo. 2. Canc. *Richards v. Evans*. ii. 109

21. An exemption of a farm from tithe of corn and grain, in consideration of keeping a church in repair, and payment of a modus in lieu of tithes of hay, will not extend to lands lately enclosed from a common (a right over which was appendant to the farm) on which no such things were produced before the inclosure, the common having been subject to payment of such tithes, as it did then produce.—3 Geo. 3. B. R. *Moncaster v. Watson*. ii. 197

22. The court will not decree against a farm-modus, on the ground of rankness.—34 Geo. 3. Scacc. *Atkins v. Lord Willoughby De Brooke*. ii. 406

23. A bill to establish a farm-modus, setting out the abutments of the farm, and stating that the modus had immemorially been paid for the said farm, is good, without stating it expressly

to be an ancient farm.—53 Geo. 3. Scacc. *Lord Stawell v. Atkins.* ii. 419

24. A modus claimed for divers parcels of land, containing about 61 acres, parcel of an ancient estate, called R. estate, consisting of 1500 acres covered by the modus, was held sufficiently certain, without setting out metes or bounds.—36 Geo. 3. *Ord v. Clarke.* ii. 424

25. Moduses being laid for certain lands, consisting of a specified number of acres, as parcel of an ancient farm within the township of A., without giving any particular description of the lands, or naming the parcels, or describing the boundaries, and without describing the ancient farm, or its boundaries, over-ruled for uncertainty.—37 Geo. 3. Scacc. *Wood v. Wray.* ii. 436

26. A modus cannot be pleaded as covering a certain demesne, of which the farm for which the tithes are demanded is parcel, unless the metes and bounds of the demesne or of the farm be set out or distinguished.

27. Though less strictness is required in an answer than in a bill by which a farm-modus is set up; yet the lands covered by the modus must be so described that they may be known with certainty.—57 Geo. 3. Scacc. *Gillibrand v. Scotson.* iii. 839

28. Where tithe of corn has never within memory been payable in a parish, and a contributory payment exempting the whole parish is paid by certain, though not all, of the owners and occupiers of the estates, the question whether it is a farm or district modus, must go to an issue.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn.* iii. 894

29. Where a defendant to a bill for tithes had described his farm as a messuage, and several closes, pieces or parcels of lands, containing a stated number of acres; and, on the hearing, an objection was taken to this description, because the precise local situation of the lands was not given; the court permitted the cause to proceed, suggesting that if the objection were insisted on, leave would be given to the defendant to file interrogatories, for the purpose of amending the description.—58 Geo. 3. Scacc. *Wright v. Southwood.* iii. 913

30. On an issue directed to ascertain whether a modus was payable in respect of a certain part of a farm, a verdict was found for the defendant in equity. A new trial being moved for, the following points were determined: 1st, That the issue was irregular, it being double in its nature, applying first to the farm, which the modus was intended to cover; next, to the payment contended for as a modus. 2dly, That the rejection of evidence of a lease was immaterial, as it only carried back some few years farther the fact of payments, which had been established for a period sufficiently long by

other evidence. 3dly, That though the verdict might be wrong in form, yet it was right in substance, and the court would not send it back for a matter of form. 4thly, That the validity of a farm-modus is not to be tried by a comparison of value with the whole tithe at any remote period; and that ancient documents cannot prevail against all proof of usage, unless they were consistent with each other, and excluded, not the probability, but the possibility, of the modus.—59 Geo. 3. Canc. *White v. Lisle.* iii. 969

31. In a defence of a modus for the produce of an ancient farm, it is indispensably necessary to shew by evidence that the farm is ancient.

32. Producing a map of the lands of which the farm was stated to consist, and proving the accuracy of the description of the lands in the map, as compared with them about 18 years before (with reference to the time of commencing the suit) is no proof of such farm being ancient, nor sufficient even to raise such a presumption that it may be capable of further proof, as to furnish ground for giving an opportunity of establishing it by an issue.—1 & 2 Geo. 4. Scacc. *Stuart v. Greenall.* iii. 1040

33. An issue will not be granted to try farm moduses on the loose and general testimony of a single witness.—5 Geo. 4. Scacc. *Wolley v. Brownhill.* iii. 1152

Feathers, see *M. Geese.*

Firewood, see *M. Fuel.*

XX. Foals.

1. A modus of 8d. for every colt established.—5 Ann. Scacc. *Hockmore v. Richards.* i. 681

2. A modus of 1d. for every colt foaled in the parish, established.—10 Ann. Scacc. *Isaack v. Portbury.* i. 697

3. A modus of 1d. for a foal not sold within the year, if sold the tenth penny, allowed.—5 Geo. Scacc. *Jones v. Canthorne.* i. 739

4. A modus of 1d. for a colt, payable at Easter, allowed.—6 Geo. Scacc. *Roe v. Bishop of Exeter.* i. 751

5. A modus of 1½d. for every colt weaned and sold, is good.—7 Geo. Scacc. *Franklyn and others v. Master and Brethren of St. Cross.* i. 768

6. A modus of 1d. for every colt foaled in the parish, decreed.—11 Geo. Scacc. *Gould v. Pearce.* i. 806

7. A modus of 1d. for every colt fallen.—11 Geo. Scacc. *Reynall v. Wills.* i. 808

8. A modus of 2d. for every colt foaled, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts.* ii. 228

9. A modus of 4d. for every foal held good and an issue directed.—57 Geo. 3. *Senec. Loring v. Yarborough.* iii. 854

XXI. *Forest.*

1. The best buck and doe is payable yearly by the owner of the forest of *St. Leonard's*, in lieu of tithes arising in the said forest; and they cannot be withheld for non-payment of the keeper's fees.—26 Car. 2. *Scacc. Conant v. Gecaves, Bart.* i. 502

XXII. *Fruit*.—See *M. Garden*—*M. Orchard.*

1. A modus of 2d. called Leighton money, in lieu of tithes of all fruit, held good.—7 W. 3. *Scacc. Estopp v. Portman.* i. 611

XXIII. *Fuel*.—See *M. Wood.*

1. It is a custom in the north to give a hearth-penny for estovers burnt, for which they prescribe to be free for every thing which comes to the fire.—4 Car. C. B. *Woolmerston's case.* i. 362

2. A custom that every housekeeper should pay a penny at Easter, called a smoke penny, in lieu and satisfaction of tithe for the fuel burnt in their respective houses, established.—31 Car. 2. *Scacc. Swan v. Stanley.* i. 523

3. A modus of 1d. for each hearth allowed.—5 Geo. *Scacc. Jones v. Cawthorne.* i. 739

4. A modus of a hearth penny for firewood, allowed.—11 Geo. *Scacc. Roe v. Bishop of Exeter.* i. 751

5. A hearth penny in lieu of tithes of wood decreed.—11 Geo. *Scacc. Gould v. Pearce.* i. 806

6. A hearth penny in lieu of all wood, furze, and broom, used in the house.—11 Geo. *Scacc. Reynall v. Wills.* i. 808

7. A smoke penny in lieu of all tithes of all wood, furze and fuel spent in the house, allowed.—13 Geo. *Scacc. Thompson v. Holt.* i. 826

8. Modus of a smoke penny in lieu of firewood, held good.—5 Geo. 2. *Scacc. Brinklow v. Edmonds.* ii. 30

9. A modus of a hen, called a loak hen, in lieu of hearthwood, honey and apples established.—11 Geo. 2. *Scacc. Burslem v. Spencer.* ii. 65

XXIV. *Garden*.—See *M. Orchard.*

1. If a penny has been paid for an ancient garden, if it be enlarged, tithes shall be paid in kind for that enlargement.—4 Car. C. B. *Thornhill's case.* i. 262

2. A modus of 1d. for every ancient garden held to cover hops and beans grown therein.—4 Car. C. B. *Alfrey v. Mill.* i. 367

3. A modus of 1d. for a garden decreed.—13 W. 3. *Scacc. Conyers v. Sweetland.* i. 642

4. A modus of a garden 1d. for garden stuff

and fruits, established.—1 Ann. *Scacc. Pridley v. Carew.* i. 649

5. A modus of 1d. called a garden 1d. for the tithes of garden, decreed to be good.—1 Ann. *Scacc. Holwell v. Woolston.* i. 649

6. A modus of 1d. called a garden 1d. for all garden stuff and fruits, established.—5 Ann. *Scacc. Hockmore v. Richards.* i. 681

7. A modus of 1d. for every garden in lieu of tithes of such garden, and the herbs, fruits, and roots grown therein, established.—10 Ann. *Scacc. Isaack v. Portbury.* i. 697

8. A modus of a garden 1d. in lieu of the tithes of garden stuff, allowed.—3 Geo. *Scacc. White v. Keate.* i. 790

9. Modus of 1d. for garden, allowed.—5 Geo. *Scacc. Jones v. Cawthorne.* i. 739

10. A modus of a garden 1d. for fruit, herbs, roots, and other garden stuffs.—6 Geo. *Scacc. Roe v. Bishop of Exeter.* i. 751

11. A modus of 1d. for all fruits, herbs, and roots, in any ancient garden belonging to any ancient messuage is good.—7 Geo. *Scacc. Franklyn v. Master and Brethren of St. Cross.* i. 758

12. A modus of a garden 1d. for the produce of the garden, allowed.—10 Geo. *Scacc. Phillips v. Symes.* i. 800

13. A garden 1d. for all garden stuff spent in the family.—11 Geo. *Scacc. Reynall v. Wills.* i. 808

14. A modus of a garden 1d. by all occupiers of ancient gardens, in lieu of tithes of all garden stuff and fruit (except apples and pears) allowed.—13 Geo. *Scacc. Thompson v. Holt.* i. 826

15. A modus of 1d. for every ancient garden established.—9 Geo. 2. *Scacc. Colchester v. Russell.* ii. 61

16. A modus of 4d. for every garden in lieu of garden stuff, allowed.—8 Geo. 3. *Scacc. Boscawen v. Roberts.* ii. 228

17. A modus for every garden and orchard in lieu of all tithes of all titheable matters or things arising therein is sufficiently laid, without stating them to be ancient gardens, &c. and is not too extensive.—50 Geo. 3. *Case. Blackburn v. Jepson.* ii. 588

18. An issue directed to try a modus of 1d. a year in lieu of the tithe of gardens.

19. A modus for gardens may be pleaded, without stating that it is payable for ancient gardens; and the jury will be directed to take the fact of the modus being payable for gardens generally, or ancient gardens, into their consideration, and the judge to indorse the poster according to their verdict.—56 Geo. 3. *Scacc. Bryant v. Bennett.* iii. 726

Garth, see *M. Orchard.*

XXV. *Geese.*

1. Prohibition on a modus of a young goose

with the feathers, paid on the 1st of August, granted, in full of tithes of all geese and feathers; to keep it feathered to that time is more than the parishioner is bound to do.—8 Car. 2. B. R. *Huit v. Hill*. i. 511

2. A modus of $\frac{1}{2}d.$ for each goose and gosling under seven, established.—10 Ann. Scacc. *Isaack v. Portbury*. i. 697

3. A modus of $1\frac{1}{2}d.$ for every goose when they did not amount to a titheable number, but when they did, tithes to be paid in kind, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts*. ii. 228

4. A modus of 1s. for every tenth goose in lieu of the tithes of such ten geese is rank, and not sufficiently particular as to intermediate numbers.—57 Geo. 3. Scacc. *Layng v. Yarborough*. iii. 854

5. Geese in kind to be delivered before Midsummer; and if any person should have under seven geese, for every goose a halfpenny; and if he should have seven, and under ten, to pay one; and to be allowed for them that wanted of ten a halfpenny a-piece for every one, and so for any odd number of geese, good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

Grasses, see M. Hay.

XXVI. Hamlet.

1. A custom that the inhabitants of a hamlet should pay a rate or sum of money in gross, or as a rent to the rector of the parish, of 13s. 4d. yearly, in lieu and satisfaction of all tithes, commonly called small tithes, or white tithes, yearly arising in the same hamlet, sent to an issue at law, upon which a verdict was found against the custom.—1654. Scacc. *Page v. Lawe*. i. 410

XXVII. Hay.

1. An acre of meadow given for tithe hay.—4 H. 3. i. 1

2. Issue upon a modus of 4d. in lieu of tithe hay on fifteen acres of land. The jury found the modus, but that part of the land was never mown; held, that this verdict was for the plaintiff, for both parties were agreed that all the land had been mown; and the finding contrary to it is void.—36 El. B. R. *Folcot v. Ridge*. i. 108

3. A modus of a load of the hay in a certain close, in lieu of the tithe hay thereon, on account of having made the grass into hay, is not good; (but the court decided upon the supposition that the party was bound to make his grass into hay).—13 Jac. B. R. *Anon*. i. 249

4. A custom to pay 1s. per acre for all marsh meadow or pasture land fed or mown in lieu of tithe of herbage and hay, held good.—27 Car. 2. Scacc. *Hatcher v. Ridley*. i. 506

5. A modus of 4d. an acre for grass made into hay decreed.—13 W. 3. Scacc. *Congers v. Sweetland*. i. 642

6. A modus of 4d. an acre for ancient meadow hay, and of 6d. an acre for new meadow hay, established.—1 Ann. Scacc. *Pidsley v. Carew*. i. 649

7. In a suit for tithe of hay, the defendants, by their answer only, set up several moduses under the name of strew-tithes, which were over-ruled by the court of exchequer, and an account decreed: this decree was reversed, and issues directed to try the existence of the moduses.—2 Ann. Scacc. *Horton v. Harrington*. i. 655

8. Twelve-pence an acre for all low meadows, and 8d. an acre for high meadows, in lieu of tithe hay, held to be good moduses.—5 Ann. Dom. Proc. *Pole v. Gardiner*. i. 675

9. A modus of the tenth cock of hay, after putting the same into grass cocks, before it be again cast abroad.—10 Ann. Scacc. *Isaack v. Portbury*. i. 697

10. A modus of 2d. a day's math, in lieu of the tithes of all grass and clover cut or mowed for hay or seed; and a like modus of 1d. per acre in another chapelry, insisted on and the bill dismissed.—7 Geo. Scacc. *Powell v. Powell*. i. 765

11. A modus of 3d. for house, hay, hen, and yard, viz. for hay a penny, house a penny, for hen a halfpenny, yard a halfpenny, is void, taking either distributively or entirely; for as to the hay a penny is unreasonable, for if a man has sixty acres of hay he pays only a penny, and if he lets them to sixty several persons, they should pay a penny a-piece.—7 Geo. Scacc. *Turton v. Clayton*. i. 771

12. A modus of 2d. a mower in lieu of tithe of hay of each lot meadow, is bad.—12 Geo. Scacc. *Somerville v. Wise*. i. 822

13. A modus of a fother of hay, in lieu and satisfaction of tithe hay, and which fother of hay was proved to be as much as could be drawn in a long wain by two oxen and two horses, held void for uncertainty, for the quantity of hay would depend on the soil, the weather, the goodness of the oxen and horses, and the will of the occupier, who might think fit to carry it in wet weather, when the land would be scarcely passable.—32 Geo. 2. Canc. *Pewicke v. Lambe*. ii. 157

14. A modus of 1d. a-house, in lieu of tithe hay, established after verdict, but the goodness of the modus much doubted in the court of exchequer, and on appeal in the house of lords.—16 Geo. 3. Scacc. *Travis v. Oston*. iii. 1248

15. A modus for hay and agistment of inclosed lands, formerly parts of wastes and commons, cannot be supported.—23 Geo. 3. Scacc. *Scott v. Fenwick*. iii. 1418

16. A modus in lieu of tithe hay of an annual payment for hay, if any, is good.—17 Geo. 3. Scacc. *Tamberlain v. Humphreys*. iii. 1367

17. A terrier describing a modus to be for all mowing grass, "except clover and the like," it was objected, that as the article excepted was not known beyond time of memory, a modus, containing that exception, must be modern: but the court held, that the expression in the terrier was not to be taken as an exception annexed to the modus, but merely as a memorandum that the modus only extended to natural hay, and not to artificial grass.—36 Geo. 3. Scacc. *Franklin v. Spilling*. ii. 428

18. A modus of 1s. for each day's math, in lieu of tithe hay, held good.

19. A variation in the description of the lands by the witnesses will not affect a modus, if the description be unnecessary, and the witnesses are able to identify the lands.—38 Geo. 3. Scacc. *Markham v. Huxley*. iii. 1375

20. A modus of 1d. in lieu of the tithe of hay of every inhabitant or occupier of a house, and having any land or belonging to, or used or enjoyed with, any house, is invalid.—50 Geo. 3. Canc. *Blackburn v. Jepson*. ii. 588

21. An issue directed to try a modus of 1s. an acre in lieu of tithe hay. Moduses of 1s. 6d. and 2s. per acre for tithe hay, held to be rank.—51 Geo. 3. Scacc. *Heaton v. Cooke*. ii. 610

22. An annual payment of 1d. by each occupier for tithe of hay was considered a good modus; but an issue was granted.—51 Geo. 3. Canc. *Leyson v. Parsons*. ii. 648

23. A modus of 4d. an acre for artificial grasses, used in the improvement of hay, considered good.—56 Geo. 3. Scacc. *Bertie v. Beaumont*. iii. 739

24. A hay modus of 2d. for a day's math of grass, is good, the quantum being ascertained by evidence.—57 Geo. 3. Scacc. *Cokburne v. Hughes*. iii. 783

25. A modus of 2d. yearly for every day's math of hay and so in proportion, is good.—5 Geo. 4. Scacc. *Davies v. Moseley*. iii. 1147

Hearth, Hearthpenny, Hearthwood, see *M. Fuel*.

Heifer, see *M. Cows*.

Hens, see *M. Eggs*.

XXVIII. *Honey.*

1. A modus of a hen called a *loak hen*, in lieu of tithes of honey, firewood, and apples, established.—11 Geo. 2. Scacc. *Burslem v. Spencer*. ii. 65

XXIX. *Hops.*

1. A modus to be paid to the rector in lieu of tithe hops is bad, where the vicar is endowed of all small tithes: for the court will take no-

tice, that they have been introduced within time of memory.—22 Car. 2. H. R. *Crook v. Riden*. i. 481

Horse, see *M. Hay*.

Inclosure, see *M. Parish*.

Lactage, see *M. Milk*.

XXX. *Lambs.*

1. Modus of three-pence for a lamb too rank, and no issue directed, because a void modus; but *Dodd* thought it good.—9 W. 3. Scacc. *Layfield v. Enticknap*. i. 687

2. A modus of 1d. for every lamb, where the parishioner has under the number of seven fold in any one year which shall be reared, held good.—10 Ann. Scacc. *Isack v. Portbury*. i. 697

3. Three-pence for a lamb is too rank a modus.—8 Geo. Scacc. *Goddard v. Kella*. i. 378

4. Modus of three-pence for every lamb in lieu of tithe lambs, payable on St. Mark's day, or as soon after as demanded, not a void modus in law; and the plaintiff refusing to try the modus at law, his bill dismissed.—4 & 5 Geo. 2. Scacc. & Dom. Proc. *Webb v. Gifford*. ii. 28

5. A modus that where the parishioner has ten lambs, the tenth is due to the rector on St. Mark's day; if nine, the rector is to have one, and pay the parishioner a halfpenny; if eight, he is to have one, and pay the parishioner a penny; and when seven lambs, the rector is to have one, and pay the parishioner three-pence halfpenny; but for a less number the rector is to have no lamb, but is only to have a halfpenny paid him for each lamb under seven, established.—5 Geo. 2. Scacc. *Brinklow v. Edmonds*. ii. 30

6. A modus of two-pence for every lamb yeaned in the parish in lieu of the tithe thereof, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts*. ii. 228

7. Moduses, of 4s. for every ten lambs depastured or fattened; of 2s. for every five such lambs; of 4d. a-piece for all such under five; and for all such above five, and under ten, also 4d. a-piece, payable yearly at the same time with tithe wool, in lieu of the tithes of such lambs; and for all other lambs bred within the parish, 3d. yearly, payable as aforesaid, in lieu of the tithes of all such other lambs, held severally void for rankness.—10 Geo. 3. Scacc. *Wood v. Harrison*. ii. 237

8. A modus of 3d. for a lamb is so notoriously rank that a court of equity will not direct an issue upon it.—27 Geo. 3. Canc. *Dunlop v. Chichester*. iii. 1384

9. Moduses of 1d. for each lamb, where the number did not exceed four; 1s. where the number did not exceed five; 1s. 8d. where the number did not exceed six; 1s. 9d. where the number did not exceed seven; 1s. 10d. where

the number did not exceed eight; 1s. 11d. where the number did not exceed nine; and 2s. where the number did not exceed ten; held not rank, and sent to an issue.—46 Geo. 3. Scacc. *Askew v. Greenhow*. ii. 553

10. A modus of 3d. for a lamb, sent to an issue.—56 Geo. 3. Scacc. *Bertie v. Beaumont*. iii. 739

11. Three-pence for a lamb, or 2s. 6d. for every tenth lamb, in lieu of the tithe of such ten lambs, not so rank as to be decided on without an issue.—57 Geo. 3. Scacc. *Layng v. Farterough*. iii. 854

12. A modus of 3d. for a lamb, sent to an issue.—66 Geo. 3. Scacc. *Drake v. Smith*. iii. 888

13. A money payment, alleged to be a modus, in lieu of the tithe of lambs, and of the wool of the first shearing of such lambs, or in lieu of the tithe of such lambs, is ill pleaded, being in the alternative. So also if pleaded as a composition.—59 Geo. 3. Scacc. *Leech v. Bailey*. iii. 953

XXXI. Manor.—See Manor.

1. A *modus decimandi* by the lord for himself, and all the tenants of his manor, to bar the parson from demanding tithes in specie, is good; for it might have a lawful beginning, viz. that before it was a manor, all the lands were in the lord's hands, and six pounds were paid for the tithes thereof. Then, when he conveys parcel thereof to others, it shall be discharged, as it was in the lord's hand.—40 El. B. R. *Pigot v. Heron*. i. 135

2. A modus that the proprietors and occupiers of such a manor, or any parcel thereof, should pay a groat to the parson for herbage tithes is bad, for if a man had but two or three feet of ground in the manor he should pay a groat; but it ought to have been laid, that the proprietors and occupiers of such a manor for themselves and their farmers had paid it.—20 Car. 2. B. R. *Anon*. i. 478

3. A payment of 3l. per annum by the lord of a manor, in lieu and in discharge of all tithes issuing out of the manor, held good.—23 Car. 2. Scacc. *Wenham v. Thetcher*. i. 494

4. A modus of 20s. a year to the vicar of a parish, in lieu of all tithes arising within a manor, and the demesne lands thereto belonging.—2 Jac. 2. Scacc. *Townson v. Hungerford*, Knt. i. 551

5. A payment of three bushels of wheat, six bushels of oats, and four groats in money in lieu of all manner of tithes in kind of the capital messuage farm, and demesne lands of the manor of Littleton, and formerly parcel of the possessions of a larger monastery, held good.—6 Ann. Scacc. *Pierce v. Russell*. i. 688

6. The lord of the manor entitled, on paying the rector a prescription rent of £6 a year, to all tithes of the manor and demesne lands thereof.—8 Ann. Scacc. *Dykes v. Thompson*. i. 692

7. A modus of nine cart loads of log-wood in lieu of all tithes of a manor, held good after verdict.—3 Geo. 2. Scacc. *Woolferston v. Mainwaring*. ii. 11

8. A modus of 48l. a year, in lieu of all tithes of a manor, held to be only a temporary composition; it appearing from a return from the first fruits office, that the whole rectory was, in Hen. 8th's time, of the annual value of 33l. only, and was now of the annual value of 80l. only; and it likewise appearing from an inquisition *post mortem*, that the whole demesne lands of the manor were, in queen Elizabeth's time, worth only 48l. a year.—18 Geo. 2. Canc. *Ekin v. Pigot*. ii. 95

9. A modus to be paid by the occupiers and owners of the demesnes of a manor, let them be ever so large or divided amongst ever so many hands, is good.—19 & 20 Geo. 2. Canc. *Hardcastle v. Smithson*. ii. 100

Marsh Land, see M. Parish.

XXXII. Milk.—See M. Agistment.—M. Cow.

1. A modus of the tenth cheese, from May-day to August, in lieu of all tithe-milk of the year is good; but to pay the tenth quart of milk (for that time only) is bad; but, perhaps, to pay it at the parsonage house, or any other place, would be good enough.—40 El. B. R. *Austyn v. Lucas*. i. 142

2. Thirteen cheeses payable yearly in lieu of lactage and tithe-milk.—26 Car. 2. Scacc. *Wickham v. Thrower*. i. 508

3. A modus of one shilling for every calf under ten, and of fifteen cheeses every year, in lieu of tithes of milk, each of the cheeses to be made of the whole milk, except such as the calves suck from their several dams, every tenth day between the 10th of May and Michaelmas, in lieu of tithe-milk of the cows, &c. within a parish, decreed.—2 W. & M. Scacc. *Staines v. Wells* and others. i. 563

4. A modus of 4d. for a milch cow, and ½d. for every milched ewe, decreed to be good.—1 Ann. Scacc. *Holwell v. Woolston*. i. 649

5. A modus to pay the tenth ordinary cheese, or tenth day's milk once skimmed, and made into cheese between St. Mark's day and All Saints' yearly, in full for cowwhite; the cheese to be collected when stiff, or every fortnight or three weeks, is void.—2 Ann. Scacc. *Lister v. Foy*. i. 654

6. Moduses of 1d. for the tithe milk and white sole of every milch cow; of one farthing for every milch ewe, established.—5 Ann. Scacc. *Hockmore v. Richards*. i. 68

7. A modus of 1*d.* for every cow that has a calf, called a renewed cow, in discharge of milk, established.—10 Ann. Scacc. *Isaack v. Portbury*. i. 697

8. For every milch ewe one farthing, in discharge of milk of such ewe.—S. C. *ib.*

9. A modus of every tenth day's cheese during twenty weeks from Holyrood-day, in lieu of tithe of milk, is good. *Semble*.—33 Geo. 3. Scacc. *Wake v. Russ*. ii. 400

Mill, see *Mill*.

XXXIII. Onion Seed.

1. For onion seed the tenth bed, if more than half a pound sown, for less, none, bad.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

XXXIV. Orchard.—See *M. Garden*.

1. If the custom be to pay a penny for every orchard, it will extend to new, as well as old orchards.—4 Car. C. B. *Woolmerston's case*. i. 362

2. A prohibition was granted upon a suggestion of a custom to pay a modus of a groat for every hogshead of cider, or 2*s.* per annum in lieu of all tithes of all grain and fruit growing in any orchard.—2 Jac. 2. B. R. *Hill v. Harris*. i. 550

3. A modus of 4*d.* for every hogshead of cider in lieu of all orchard fruit growing within a parish, is void in law.—1 W. & M. Scacc. *Edgerton v. Follett*. i. 562

4. A modus of 6*d.* for every orchard.—11 Geo. Scacc. *Smithson v. Dodson*. i. 801

5. Modus of 4*d.* a year for every orchard, in lieu of all tithes of fruit trees in the parish, over-ruled, as being a modus of one tithe in lieu of another; but if it had been in lieu of all orchards, or in lieu of the fruit growing in all orchards, it might have been good.—3 Geo. 3. Scacc. *Torriano v. Legge*. ii. 200

6. Moduses for every garden and orchard in lieu of all tithes of all titheable matters or things arising therein, sufficiently laid, without stating them to be ancient gardens, &c. and not too extensive.—30 Geo. 3. Canc. *Blackburn v. Jepson*. ii. 588

7. Moduses of 4*d.* for messuage and garth, (orchard) and 2*d.* for every cottage and garth, held good, and issues directed.—57 Geo. 3. Scacc. *Layng v. Yarborough*. iii. 854

XXXV. Orogang.

1. A custom in a vill to pay sixpence for each bovat in lieu of tithe of hay.—23 Edw. 1. *The King v. Bude*. i. 5

2. An issue was directed to try whether there was a custom to pay 1½*d.* an oxgang per annum in full satisfaction for all the tithes of hay,

herbage, and agistment of all the meadow and pasture grounds within a township.—2 Jac. 2. Scacc. *Wardell v. Squire*. i. 551

3. A modus of 3*d.* payable at Michaelmas, for each and every oxgang of land, containing sixteen acres of arable, meadow, and pasture, after the rate of seven yards to the pole or perch, in lieu of the tithes of grass made into hay, yearly arising within such oxgang, was holden to be ill pleaded, and not, stating with particularity the quality and quantity of the land, and how, by whom, and when, and in lieu of what the payment was to be made; the modus was also held to be void for uncertainty, the oxgang being stated to consist of arable, meadow, and pasture, without any specification of the proportions, and nothing being expressed to be payable for an oxgang of arable only, or of arable and pasture only.—31 Geo. 3. Scacc. *Markham v. Laycock*. iii. 1364

Pannage, see *M. Agistment*.

XXXVI. Parish.

1. A custom for the several possessors and occupiers of every ancient tenement within a parish to pay to the rector three bushels of oats and one bushel of bigg, in full satisfaction of all the tithes in kind of oats and bigg within the rectory, held good.—25 Car. 2. Scacc. *Parsons v. Noble*. i. 498

2. One shilling per acre for all pasture ground in a parish, decreed.—36 Car. 2. Scacc. *Eve v. Wightwick*. i. 543

3. A custom that the owners, farmers and occupiers of any meadow ground within the ancient inclosures of a parish, should pay a modus of 4*d.* per acre for hay, held good.—4 Jac. 2. Scacc. *Simpson v. Hill*. i. 555

4. A custom that out-dwellers, occupying ancient pasture in a parish, shall pay 4*d.* an acre yearly, on the first of August, in lieu of tithes, is a good custom.—2 W. & M. Scacc. *Claxton v. Langton*. i. 567

5. A modus for persons residing out of the parish, but occupying lands in it, to pay 4*d.* an acre for the tithe of hay, and the herbage of pasture lands, not ploughed or sown, held good.

6. Modus for persons residing out of the parish to pay 10*d.* an acre for the lands occupied by them in the parish, held good, after verdict.—3 Geo. 2. Canc. *Chapman v. Bishop of Lincoln*. ii. 11

7. A custom that persons occupying meadow or pasture land in the parish, but not residing in it, shall pay 10*d.* an acre yearly, and so in proportion for a less quantity, in lieu of all tithes arising on such land, is good.—22 Geo. 2. C. B. *Sansom v. Shaw*. ii. 120

8. A parochial modus may extend to lands

inclosed within time of memory.—27 Geo. 3. Canc. *Bishop v. Chichester*. iii. 1354

9. Issue directed to try a modus of 9d. an acre for marsh land, except when sown with corn, grain, flax, or planted with hops, in lieu of all tithes of hay and pasture, and all small tithes, except flax, hemp, and hops.—27 & 28 Geo. 2. Canc. *Chapman v. Smith*. ii. 141

10. Where tithe of corn has never within memory been payable in a parish, and a contributory payment exempting the whole parish, is paid by certain, though not all, of the owners and occupiers of the estates, the question whether it is a farm or district modus, must go to an issue.—58 Geo. 3. Scacc. *De Whelpdale v. Milburn*. ii. 894

XXXVII. Park.

1. A modus of a buck in summer and a doe in winter, in lieu of the tithes of a park, when disparked, held good; for although there be no park, yet a buck may be given out of another park.—31 El. C. B. *Lord Rich's case*. i. 99

2. If a park had paid 10s. for all tithes renovant within the park, and be disparked and sown with corn, the 10s. only shall be paid; but if the prescription be for the deer and herbage of the park, not for the whole park, and corn be sown, tithes in kind shall be paid. So if the shoulder of every deer be to be paid for all tithes, when disparked, tithes in kind shall be paid; or if to pay 10s. and a shoulder of every deer, if disparked, tithes shall be paid in kind, and not the ten shillings only.—38 El. B. R. *Bedingfield v. Feak*. i. 118

3. Payment of a buck and doe for all tithes of a park is good; for though they are *ferre nature* and not titheable themselves, yet they may be given as a modus, as a great tree may be given for tithe of trees titheable.—2 Jac. *Sharpe v. Sharpe*. i. 161

4. The court much doubted whether one that had a park, and was used to pay one shoulder of a deer for all manner of tithes, should pay in kind for it when disparked.—10 Jac. C. B. *Anon.* i. 203

5. A money modus for the tithes of a park is not destroyed by disparking.—13 Jac. B. R. *Mascall v. Price*. i. 225

6. The court were divided on the question, whether a modus for a park of 2s. a year, and a shoulder of every third deer killed in it, should be determined by disparking; but according to Rolle, the majority, if not the whole, thought that if the shoulder only had been payable, and the park had been destroyed by the act of the party, the modus would have been determined.—12 Jac. C. B. *Cowper v. Andrews*. i. 240

7. A prescription that the owners and occupiers of a certain park had used to pay £4 in full satisfaction of all tithes of the said grounds,

held good.—13 Jac. C. B. *Skelton v. Montague*. i. 248

8. In prohibition to a libel by a rector, for tithes of lands formerly a park, payment of a modus of a buck and doe to the vicar, upon request, in lieu of all tithes, was held good after the disparking. But if the prescription had been to pay a buck and doe out of the park, it would alter the case.

9. Park is only an appellation or name of land, and this name or appellation does not pay tithes, but the land itself.—19 Jac. C. B. *Poole v. Reynolds*. i. 322

10. Where the shoulder of every deer killed in a park had been paid to the rector in lieu of tithes of the park, it was held that by disparking the modus was gone.—28 Car. 2. Scacc. *Skinner v. Smith*. i. 510

11. A modus of £3. 8s. and the running of a horse in certain land from the 3d of May to the 20th of September, in lieu of all tithes of such part of a park as lay within the parish of the plaintiff, decreed.—7 Ann. Scacc. *Bowles v. Lord Arundel*. i. 688

12. A modus of a buck and doe in lieu of all tithes of a park, whether the same be ploughed, sown, mown, or agisted, held good.—12 Ann. Scacc. *Nawton v. Clarke*. i. 704

13. A composition of 20s. yearly, out of the profits of T. manor, in lieu of tithes of T. park, held good.—34 Geo. 3. Scacc. *Sawbridge v. Benton*. ii. 400

Pears, see *M. Apples*.

Perry, see *M. Apples*.

XXXVIII. Pigs.

1. A modus of twenty pence for every sow that had pigs that had at any time been kept in the parish, although such sows pigged in another parish.—9 Ann. Scacc. *Wright v. Elderton*. i. 694

2. A modus that where the parishioner has ten pigs, the tenth is due to the rector on St. Mark's day; if nine, the rector is to have one, and pay the parishioner a halfpenny; if eight, he is to have one, and pay the parishioner a penny, and when seven pigs, the rector is to have one, and pay the parishioner three pence halfpenny; but for a less number the rector is to have no pig, but is only to have a halfpenny paid him for each pig under seven.—5 Geo. 2. Scacc. *Brinklow v. Edmonds*. ii. 30

3. A modus of 1d. for every pig when they did not amount to a titheable number, but when they did, tithes to be paid in kind, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts*. ii. 228

4. A modus of 1s. for every seventh pig on the 9th day, sent to an issue after considerable doubt.—56 Geo. 3. Scacc. *Bertie v. Beaumont*. ii. 739

5. One shilling for every tenth pig, in lieu of the tithe of such ten pigs, rank, and not sufficiently particular as to intermediate numbers, and therefore bad.—57 Geo. 3. Scacc. *Layng v. Yarborough*. iii. 854

6. Pigs in kind to be delivered before Midsummer, and if any person should have under seven, for every pig a halfpenny, and if he should have seven and under ten, to pay one, and to be allowed for them, that wanted of ten a halfpenny a piece for every one, and so for every odd number, good.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

XXXIX. Potatoes.

1. A modus of 4d. for potatoes tilled in a ridge in the field for family use and not for sale, allowed.—8 Geo. 3. Scacc. *Boswell v. Roberts*. ii. 228

XL. Rape Seed.

1. A modus of 1s. 6d. in the pound in lieu of the tithes of rape seed, when sold in the seed, is bad for uncertainty and liability to fraud.—57 Geo. 3. Scacc. *Layng v. Yarborough*. ii. 854

2. Rape seed, the tenth bushel, ready dressed, the parson allowing for the dressing 1d. the bushel, bad, for omission of any smaller quantity.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

Reeds, see *M. Acre*.

XLI. Sheep.

1. A custom to pay for the tithes of sheep bought or sold, for the lamb, $\frac{1}{2}$ d. and for the wool and fleece of the sheep, 1d. and for all sheep bought or sold between Lady-day and Lammas, 4d.; and as to the residue of the year, nothing said, is bad.—30 El. B. R. *Perry v. Soam*. i. 96

2. A custom to pay tithes in kind for sheep, if kept all the year; but if sold before shearing time, to pay a half-penny for each sold; held unreasonable.—17 Car. C. B. *Weeden v. Harden*. i. 401

3. A modus to pay so much for sheep sold before clipping, allowed.—22 Car. 2. B. R. *Hust v. Clerke*. i. 487

4. A modus of one halfpenny for every barren sheep sold after Candlemas, and before shear time, was held unreasonable.—27 Car. 2. Scacc. *Turnor v. Weedon and others*. i. 507

5. Moduses of 1d. a fleece for every sheep kept the whole year, one half-penny a fleece for every sheep wintered out; for every lamb fallen there, if but one, $\frac{1}{2}$ d.; two, 1d.; three, 1 $\frac{1}{2}$ d.; four, 4d.; five, 1s.; six, 1s. 10 $\frac{1}{2}$ d.; eight, 1s. 11d.; nine, 1s. 11 $\frac{1}{2}$ d.; ten, 2s.; allowed.—10 Geo. Scacc. *Cockcroft v. Utley*. i. 797

6. A modus of 3s. 4d. for every score of sheep shorn out of the parish; and so in proportion according to number and time, for the wool and lamb of such sheep, was held good by the court upon the hearing; but the point coming on again on a re-hearing, and it appearing that the payment was alleged to be at Easter, or otherwise when the sheep shall be sold, it was held to be void for the uncertainty.—10 Geo. Scacc. *Phillips v. Symes*. i. 800

7. A modus of 1d. for every sheep, and an halfpenny for every lamb, brought into the parish after Candlemas, and sold out before shearing time, is a wool-modus, not an agistment-modus.—33 Geo. 3. Scacc. *Garnons v. Barnard*. ii. 380

8. A custom for every person resident and occupying lands within the parish to pay 3d. for every sheep sold or sent out of the parish, after Old Candlemas-day, and before shearing time, in lieu of the tithes payable in respect of such sheep, is good.—26 Geo. 3. Scacc. *Bennett v. Read*. ii. 1338

Small Tithes, see *Tithes, Small*.

Township, see *M. Vill*.

XLII. Turnips.

1. A modus for turnips was held bad; being of too recent introduction into the country to be the subject of immemorial usage.—51 Geo. 3. Canc. *Layson v. Parsons*. ii. 648

Vegetables, see *M. Garden*.

XLIII. Vill.

1. A modus that all the occupiers within a vill had used to pay 2s. 6d. for all tithes of the vill is bad, there being no remedy to compel any that refuse to contribute; but if it had been that any occupier had used to pay, it would have been good.—19 Car. 2. B. R. *Anon*. i. 457

2. An issue directed by the exchequer to try whether there was a custom that all the inhabitants, owners and occupiers of land within a township, should pay 3l. 13s. 4d. yearly, in lieu of all tithes of corn and hay within the township.—20 Car. 2. Scacc. *Fleetwood v. Livesay*. i. 475

3. A modus, that the occupiers of each township (there being several townships within the parish), time out of mind, had paid certain sums of money, in lieu of tithe-hay, which sums were collected by the respective constables, and the whole was by some or one of them paid over to the rector, as a modus for the whole parish, considered good; but, it being

doubtful whether all the occupiers of the lands in each township had contributed to the sum to be raised by the respective townships, an issue was directed to try the modus.—5 Geo. 2. Scacc. *Hereford, B. of v. Cowper.* iii. 1236

4. Issue directed to try the validity of a modus for the owners and occupiers of lands and tenements within certain vills in the parish, to pay on a certain day to the vicar or impropriator, a specified sum for each vill, in lieu of the tithes of hay. *Semb.* that such modus is good.—19 & 20 Geo. 2. Canc. *Hardcastle v. Smithson.* ii. 96

5. A modus of 2*l.* 8*s.* 1*d.* payable for certain tithes within a township, the occupier of each farm or tenement within the said township respectively, paying his rateable proportion, but without stating the proportion payable for each farm, bad for uncertainty; and held also, that the payment being void as a modus for uncertainty, could not be insisted on as a composition requiring notice to determine it.—57 Geo. 3. Scacc. *Wolley v. Hadfield.* iii. 775

XLIV. Wood.

1. A custom to pay a hearth penny in satisfaction of all tithes of combustible wood is good.—41 El. B. R. *Green v. Hun.* i. 147

2. A great tree may be given for tithe of trees titheable.—2 Jac. *Sharpe v. Sharpe.* i. 161

3. A hearth penny for wood sold held good.—6 W. & M. Cam. Scacc. *Pocock v. Cole.* i. 583

4. A modus of a penny called smoke penny in lieu of tithe of all wood burnt, held good.—7 W. 3. Scacc. *Estopp v. Portman.* i. 611

5. A modus of a hearth penny for firewood, decreed.—13 W. 3. Scacc. *Conyers v. Sweet-hand.* i. 642

6. A modus of 1*d.* for wood and furze established.—1 Ann. Scacc. *Pidsley v. Carew.* i. 649

7. A modus of 1*d.* called a hearth penny for wood and furze burnt, good.—1 Ann. Scacc. *Hobdell v. Woolston.* i. 649

8. A modus of 1*d.* for all wood, furze, &c. good.—5 Ann. Scacc. *Hockmore v. Richards.* i. 681

9. A custom that the parson should take the underwood growing upon one acre in lieu of the tithes of four woods, held good.—1 Geo. Scacc. *Babbage v. Rookwood.* i. 714

10. A custom to take all the wood growing on a piece of woodland containing an acre and a half in lieu of the tithes of wood felled on ancient wood grounds in the parish is good.—1 Geo. Scacc. *Spooner v. Head.* i. 717

11. A custom for every householder inhabitant within the parish, to pay 2*d.* at Easter by the name of hearth-silver, garden-silver, shot and waxen silver, in satisfaction of the tithe of the produce of any garden, yard, or orchard,

occupied in the parish by such householder inhabitant, and of all woods, cuttings, and loppings, cut in the year upon land in the parish in his occupation and also of the agistment tithe is good.—26 Geo. 3. Scacc. *Bennett v. Read.* iii. 1338

XLV. Wool.

1. A modus of three halfpence for the wool of all sheep sold after shearing and before Michaelmas, held good.—38 El. B. R. *Thor.* i. 113

2. A modus of 8*d.* a score, and so in proportion, in lieu of tithe of wool of sheep shorn in the parish, but not wintered there, allowed.—13 Geo. Scacc. *Thompson v. Malt.* ii. 826

3. A modus of a halfpenny, payable on sheer day for the wool of each sheep dying between Candlemas and sheer day, was established.—5 Geo. 2. Scacc. *Brinklow v. Edmonds.* ii. 30

4. A modus of four pence per month, payable on sheer-day, for the tithe of wool of every hundred sheep shorn in the parish, which were brought into it after the second day of February, and kept till shearing day, and after that rate for every less number of sheep, and for a less time, established.—6 C. ii. 80

5. A modus of 1*d.* for every fleece of wool from every sheep fed and depastured in lieu of the tithe of such wool, allowed.—8 Geo. 3. Scacc. *Boscawen v. Roberts.* ii. 228

6. A customary mode of tithing, paying 1*d.* per head for sheep brought into the parish after Candlemas and clipped in the parish, in lieu of the tithe of wool; 3*d.* per head for sheep in the parish before Candlemas and carried out before shearing time, as an average payment for the wool carried out; will be good: the latter payment may be applicable to the wool-tithe, though not then due.—30 Geo. 3. Scacc. *Ellis v. Saul.* ii. 360

7. One shilling for every tenth fleece, in lieu of the tithe of ten fleeces, rank. It is also bad, because it is not stated what is to be paid between ten and five.—57 Geo. 3. Scacc. *Layng v. Yarborough.* iii. 854

8. Wool, the tenth stone or tenth pound to be paid presently after the sheep were clipped; and if any person should sell sheep after Candlemas, and before clipping, to pay for the wool, for every sheep 1*d.*, if he sold them out of the parish, good.—58 Geo. 3. Scacc. *Jenkinson v. Royston.* iii. 896

XLVI. Yard-land.—See *M. Organg.*

1. A modus of 12*s.* a yard-land in lieu of small tithes decreed.—29 Car. 2. Scacc. *Gwynne v. Sharpe.* i. 514

2. A modus of 6*s.* 8*d.* for every yard-land, good, though the lands uncertain.—1 Geo. 2. B. R. *Mason v. Hype.* ii. 6

MONASTERIES.—See DISCHARGE.

1. All monasteries given to the king, which have not above two hundred pounds a year in lands.

2. The king shall have all monasteries before assured to him, or that have been suppressed.—27 H. 8. c. 23. s. 1. iv. 30

3. Provided always, that the king's highness, at any time after the making of this act, may at his pleasure ordain and declare, by his letters patents under his great seal, that such of the said religious houses which his highness shall not be disposed to have suppressed nor dissolved by authority of this act, shall still continue, remain, and be in the same body corporate, and in the said essential estate, quality, and condition, as well in possession as otherwise, as they were afore the making of this act, without any suppression or dissolution thereof; or of any part of the same, by the authority of this act; and that every such ordinance and declaration, so to be made by the king's highness, shall be good and effectual to the chief governors of such religious houses which his majesty will not have suppressed, and to their successors, according to the tenors and purports of the letters patents thereof to be made, any thing on things contained in this act to the contrary hereof, notwithstanding.

4. Appropriation for the cells of greater monasteries. 217 iv. 34

5. All monasteries and other religious and ecclesiastical houses and places, &c. dissolved, and their possessions given to the king.—81 H. 8. c. 13. s. 3. iv. 40

6. Such abbey lands, &c. as before the dissolution were discharged of payment of tithes, shall be held by the king, &c. according to their estates, and titles, discharged and acquitted of payment of tithes, as freely, and in as large and ample manner as the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, or any of them, had held, occupied, possessed, used, retained, or enjoyed the same, or any parcel thereof, at the days of their dissolution.—s. 21 iv. 48

7. The same liberties, franchises, privileges, and temporal jurisdictions, that the late owners of religious houses had within three months before their dissolutions shall be revived, and be actually in the king, and in the survey of the court of augmentations.—32 H. 8. c. 20. iv. 52

8. Three judges held, that all appropriations belonging to smaller monasteries were given to the king by 27 H. 8. WARBURTON thought that they were given by 31 H. 8. and that the provisions of the latter act extended altogether

to lands, &c. which came to the king by the former.—15 Jac. C.B. *Wright v. Gerrard*.

i. 289

9. A list of the greater monasteries.—iv. 329

NONÆ ROLLS.

1. The ninth lamb, fleece and garb granted to the king; and of cities and boroughs, the ninth of their goods and chattels, &c.—14 Edw. 3. st. 1. c. 20. iv. 7

NON-DECIMANDO.

See DISCHARGE.—IMPROPRIATOR.

NON-RESIDENCE.

1. Living in any other house in his parish than the parsonage-house is non-residence on the part of the rector. *Sed quare?* 40 El. B. R. *Goodale v. Butler*. i. 138

2. A parson covenanted that one should have the tithes of certain lands for a term of years, and before the end of the term resigned; on an action of covenant by the lessee, it was held that covenants as well as leases, were void by non-residence for 80 days, by 13 El. & 14 El.—14 Jac. B. R. *Rudge v. Thomas*. i. 256

3. If a parson have two adjoining benefices, one of which has a house, but the other has not; and he reside in a house in the latter parish: *Quare* whether he be liable under the statute for non-residence in the parish which has the parsonage house?—17 Jac. C. B. *Canning q. t. v. Jones*. iii. 1206.

4. A parson makes a lease for years, which is confirmed, this does not determine by his death, as by non-residence. A non-residence within the statute is a non-residence voluntary, and punishable by the statute.—24 Car. 2. B. R. *Bayly v. Munday*. i. 496

5. A plea of non-residence to a bill for tithes by the lessee of a rectory allowed.—11 Geo. Scacc. *Mills v. Etheridge*. i. 806

6. Where non-residence is pleaded in bar to a bill the plaintiff is not entitled to a discovery, and HALE said, that no construction would be too liberal to make parsons reside, and take care of their parishes.—7 Geo. Scacc. *Quilter v. Mussendine*. i. 816

7. Where non-residence is pleaded to a bill, quantities and values need not be discovered.—13 Geo. Scacc. *Bokenham v. Bentfield*. i. 828

8. In an action for non-residence, it was holden, that a residence by the rector, who was also an arch-deacon, in a private dwelling-house within the parish and rectory, and also within

the limits of the arch-deaconry; but which did not belong to the arch-deaconry, (there being no archidiaconal house,) was no defence to the action; it appearing, that there was a good parsonage-house belonging to the rectory, in which he might and ought to have resided.—

11 Geo. 3. B. R. *Law v. Ibbetson.* ii. 256

9. In an action for non-residence, it is not absolutely necessary that the admission, institution, and induction of the defendant should be proved; evidence of the receipt of tithes, cutting timber on the glebe, and acting in other respects as parson, is sufficient.—16 Geo. 3. B. R. *Bevan q. t. v. Williams.* ii. 306

10. In an action for non-residence, it was holden that the want of a parsonage-house was no excuse for the parson's residing out of the parish.—16 Geo. 3. B. R. *Wilkinson q. t. v. Allott.* ii. 306

11. An act to promote the residence of the parochial clergy by making provision for the more speedy and effectual building, re-building, repairing, or purchasing houses and other necessary buildings and tenements, for the use of their benefices.—17 Geo. 3. c. 53. iv. 220

12. A rector having come to an agreement with his parishioners for tithes, cannot in equity set up his own non-residence to avoid the agreement.

Semb. such an agreement is not within the 13 or 14 of Eliz.—32 Geo. 3. Scacc. *Atkinson v. Folkes.* ii. 368

13. A rector may recover in ejectment against his lessee, on the ground of the lease of the rectory being avoided on account of his own non-residence, by force of the statute 13 Eliz. c. 20. And the lease to the defendant describing him as Doctor in Divinity, produced by him at the trial in support of his title, is *prima facie* evidence of his being such as he is therein described to be, so as also to avoid the lease under the stat. 21 H. 8. c. 13. s. 3.—42 Geo. 3. B. R. *Frogmorton dem. Fleming v. Scott.* ii. 506

14. An act to amend the laws relating to spiritual persons holding of farms, and for enforcing the residence of spiritual persons on their benefices in England.—43 Geo. 3. c. 84. iv. 235

15. An act to promote the building, repairing, or otherwise providing of churches and chapels, and of houses for the residence of ministers, and the providing of churchyards and glebes.—43 Geo. 3. c. 108. iv. 251

16. An act to rectify a mistake in an act made in this present session of Parliament intitled, "an act to amend the laws relating to spiritual persons holding farms; and for enforcing the residence of spiritual persons on their benefices in England;" and to remove a doubt respecting the title of the statute of the

twenty-first year of King Henry the Eighth therein mentioned.—43 Geo. 3. c. 109. iv. 252

17. An act for amending the act forty-third George Third, to promote the building, repairing or otherwise providing of churches and chapels, and of houses for the residence of ministers, and the providing of churchyards and glebes.—51 Geo. 3. c. 115. iv. 265

18. An act to stay proceedings in actions under the act.—43 Geo. 3. c. 84. iv. 269

19. An act to explain and amend several acts relating to spiritual persons holding of farms; and for enforcing the residence of such persons on their benefices, in England, for one year, and from thence until six weeks after the meeting of the then next Session of Parliament.—54 Geo. 3. c. 175. iv. 269

20. An act for enabling spiritual persons to exchange the parsonage or glebe-houses or glebe-lands, belonging to their benefices, for others of greater value, or more conveniently situated for their residence and occupation; and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe-houses and glebe-lands, and for purchasing and annexing lands to become glebe in certain cases; and for other purposes.—55 Geo. 3. c. 147. iv. 272

21. An act to amend and render more effectual an act passed in the last session of parliament, for enabling spiritual persons to exchange their parsonage-house or glebe lands, and for other purposes therein mentioned.—56 Geo. 3. c. 52. iv. 281

22. An act to consolidate and amend the laws relating to spiritual persons holding farms; and for enforcing the residence of spiritual persons on their benefices; and for the support and maintenance of stipendiary curates in England.—57 Geo. 3. c. 99. iv. 282

23. An act to amend and render more effectual 55 Geo. 3. c. 147.

24. Barristers named in commissions for exchanges, &c. in Middlesex to be named by the chief justice of the King's Bench or Common Pleas.—1 Geo. 4. c. 6. iv. 306

NOTICE.

See AGREEMENT.—COMPOSITION.—LEASE.

1. By the civil law notice must be given to the parson when the tithes are set out, but by the common law it is not so.—15 Jac. *Spencer's Case.* i. 261

2. If a parishioner set out his tithes, and sever the 10th part from the 9 parts justly and truly, though he do not give a personal notice to the parson, or general notice in the church, of the time of setting out the tithes, so that the parson may be present at the setting out of the

tithes, and see it, to be justly done, yet this is a good setting out of tithes. By the court, in a writ of error upon a judgment in an action upon the case against the parson, for leaving his tithes of hay upon the land of the parishioner, after notice of the setting out, by which the parishioner lost his grass there: but it was not alleged that the parson had notice of the time of setting out of tithes, and yet the court affirmed the judgment against the parson.—13 Car. B. R. *Chase v. Ware*. 1 Ro. Abr. 643

3. The court were all of opinion that no notice need be given to the parson of setting out tithes, though notice must be given before action brought for not taking away tithe after set out.—1 W. & M. C. B. *Periam v. —*. i. 560

4. Though by the ecclesiastical law it is necessary to give notice to the parson of setting out tithes, it is not so by the common law.—2 W. & M. B. R. *Shetter v. Friend*. i. 568

5. By the common law it is not necessary to give notice of setting out tithes.—8 W. 3. B. R. *Gale v. Ewer*. i. 621

6. Bill for tithes, alleging a custom, that the parishioners ought to give notice to the person entitled, of setting out their tithes; or, that there was some other custom of the like nature, held bad, for uncertainty, and the bill dismissed with costs. Upon the hearing it was objected for the defendant, first, that it was unreasonable the occupier should be obliged to give notice to the person entitled to the tithes, for he might live an hundred miles out of the parish.

Barons CARTER and COMYNS thought there was something in this objection; though the Lord Chief Baron thought this well enough, for notice to the servant would be good notice in that case.—7 Geo. 2. Scacc. *Beaver v. Spratley*. ii. 59

7. Personal notice of setting out tithes is not necessary at common law.

Per LEE, J. of Assize. I know the Ecclesiastical Court held notice necessary to be given to the parson, but I think it settled that it is not necessary at common law, though it is usually done out of civility. *Chase v. Way* [WARE] is express, that notice is not necessary.—6 Geo. 2. N. P. *Hewke v. White*. iii. 1238

8. By the ecclesiastical law, notice of setting out tithes is necessary, but by the common law it is not; though previously to bringing an action for not taking away tithes, notice must be given that they have been set out; a custom that the occupier shall give notice to the owner of the tithes of setting them out, is, however, a good custom.—6 Geo. 3. B. R. *Butter v. Heathby*. ii. 215

9. Where by the custom, notice of tithing is to be given, an hour's notice is not sufficient.

—36 Geo. 3. Scacc. *Tenant v. Stubbing*. i. 425

10. In ejectment against a lessee of tithes for holding over, after the expiration of a notice to quit, some evidence must be given to shew that he did not mean to quit the possession; as by his declaration to that effect, or even his silence when questioned about it; or, as it seems, by shewing that the defendant, who claimed by assignment from the original lessee, had entered into the rule to defend as landlord. But a second notice to the defendant to quit at Michaelmas 1811, is a waiver as to him of a former notice given to the original lessee, from whom he claimed by assignment, to quit at Michaelmas 1810.—52 Geo. 3. B. R. *Brierly, Doc dem. v. Palmer, Bart.* ii. 653

NURSERY.

1. Tithes shall be paid of young trees planted in a nursery, when taken up, and sold to be planted in other parishes, as well as of corn or carrots, or such things.—14 Car. B. R. *Gibbs v. Wyborne*. i. 398.

2. Tithes shall be paid for trees sold from a nursery, whether they yield fruit which pays tithes or not, and although they are transplanted in the same parish.—16 Car. 2. Scacc. *Grant v. Hedding and Ball*. i. 442.

OFFERINGS.

1. All and every person and persons which by the laws or customs of this realm ought to make or pay their offerings, shall yearly from henceforth well and truly content and pay his or their offerings to the parson, vicar, proprietor, or their deputies or farmers of the parish or parishes where it shall fortune or happen him or them to dwell or abide; and that at such four offering days, as at any time heretofore within the space of four years last past, has been used and accustomed for the payment of the same, and in default thereof, to pay for the said offerings at Easter then next following.—2 & 3 Edw. 6. c. 13. s. 10. iv. 87

ORE.

1. Tithe ore is not due of common right, but by particular custom only.—4 Jac. 2. Canc. *Burton v. Hutchinson*. i. 554

2. A custom to pay the tenth dish of all lead ore, held good.—5 W. & M. Scacc. *Pindar v. Jackson*. i. 583

3. Tithes of lead ore claimed by a vicar by prescription.—28 Car. 2. Canc. *Brown v. Vermuden*. i. 509

OYSTERS.

L. No tithes are due for oysters or oyster lays.—12 Ann. Scacc. *Murray v. Skinner*. i. 706

PARK.—See *Modus, Park*.

1. By HOBART. The word *park* is only an appellation or name of land, and this name or appellation may not pay tithes, but the land itself.—19 Jac. B. R. *Poole v. Reynolds*. i. 322

PARLIAMENTARY SURVEY.

See *SURVEY*.

PARSON AND VICAR.

See *TITHES, to whom due—Chancery—Eschequer*.

1. A dispute between parson and vicar shall be tried in the spiritual court.—35 H. 6. i. 38

2. A question of tithes by prescription, between parson and vicar, shall be tried in the spiritual court, for the prescription of the common law is eighty years, &c. but in the spiritual court, possession for twenty or thirty years makes a prescription.—22 Edw. 4. i. 47

3. *De mero jure* the parson is to have all tithes, if there be not any endowment of the vicarage.—28 & 29 El. *Bush v. Hunt*, or the Vicar of *Pancras* case. (Godb. 64.) i. 90

4. Where the vicar was endowed generally (*decimis garbarum et feni ac mortuariis vivis duntaxit exceptis*) and he had taken tithe for twenty years from the lands where woad had been sown; held that the tithe of woad should be paid to him.—30 El. Exch. *Baskerville v. Clarke*. i. 92

5. In a prohibition, by Botham and Copper against the Lady Gresham, who had impleaded them in the spiritual court for tithe hay, and made their suggestion, that time out of mind, &c. they had paid to the vicar of the said parish 4d. for the tithe of hay of every acre. It was moved, that upon that surmise a prohibition ought not to be granted, for that a *modus decimandi* shall never come in question: but the party ought to have pleaded the same matter in the spiritual court, *scil.* that the same appertains to the vicar and not to the parson: and then if the vicar sue for the tithe of the hay, the *modus decimandi* will come in question; and although he has aversed in his surmise, that the tithe hay belongs to the vicar, yet that is not material: and afterwards a consultation was

awarded.—30 El. C. B. *Botham and Co. v. Lady Gresham*. i. 94

6. Where the right to tithes is in question between parson and vicar, the common law courts will not interfere, it being properly triable in the spiritual court.—36 El. B. R. *Sherbourne v. Clarke*. i. 106

7. Though the right of tithes between parson and vicar shall be tried in the spiritual court; yet where a *modus* was the subject of dispute it was doubted whether a prohibition should go, as that court will not allow a *modus*. Besides, the spiritual court will not allow one to plead the interest of the vicar, nor payment to him in discharge of tithes claimed there by a rector, but the vicar ought to come in *pro interesse suo*; therefore the common law shall aid, if he collude and refuse to come.—36 El. B. R. *Tryor v. Betts*. i. 107

8. The spiritual court will not allow a plea of *modus decimandi*, but only of payment of tithes in kind; and they will not allow him to plead the interest of the vicar, nor payment to him for discharge, but he ought to come in *pro interesse*; and if he will not come, but collude with the parson, to charge the parishioner to pay tithes in specie, he shall be charged to pay other tithes than he has used, and therefore the common law shall aid him.—36 El. B. R. *Tryor v. Betts*. i. 107

9. A parson had the great tithes of a parish, and the vicar the small tithes; held that saffron being a small tithe, the vicar should have it, although the land on which it was grown, had produced corn for 40 years before, of which tithes had been paid to the parson. So if the vicar is to have all the hay, if the meadow be converted into arable, the parson shall have it.—38 El. B. R. *Bedingfield v. Pent*. i. 118

10. Where the suit is between parson and vicar concerning the right of tithes, no prohibition shall go, *contra* where a farmer, who is a temporal man, is a party.—S. C. i. 118

11. Where the right of tithes is confessed, and the only question is whether they belong to the parson or the vicar, the common law courts will not interfere.—2 Jac. *Rusell v. Knowles*. i. 120

12. The parson cannot prescribe against the endowment of the vicar.—3 Jac. Cases *Spring's case*. iii. 120

13. Payment of tithes to the parson is a sufficient discharge against the vicar, for of common right no tithes belong to the vicar, but only on an endowment or prescription, which must be shewn on the part of the vicar, for the court will not intend it.—4 Jac. B. R. *Greene v. Austen*. i. 164

14. A vicar endowed with the small tithes, libelled for them in the spiritual court; upon which the defendant pleaded a prescription in

the parson against the endowment, made in 1310; and because the spiritual court allowed this plea the plaintiff had a prohibition to stay his own suit.—4 Jac. B. R. *Priage v. Child*. i. 166

15. I. S. was parson of D. as appropriate, and A. his vicar, and the king is patron of the said vicarage, and debate was between the parson and the vicar; this suit ought to be in the exchequer for these tithes, and by the court it may be commenced accordingly by English bill in the exchequer, or by action in the office of pleas, for it is apparent that the king is supreme ordinary.—9 Jac. Scacc. *Anon.* i. 199

16. If a modus be payable to a vicar for the tithe hay of a close which is sown with corn, and tithes in kind during that time paid to the parson, yet the modus shall revive when again hay.—10 Jac. C. B. *Brown's case*. i. 203

17. Where the right to tithes is in question between parson and vicar, the common law courts will not interfere, it being properly triable in the spiritual court.—11 Jac. B. R. *Draiton v. Smith*. i. 221

18. Prohibition was refused upon suggestion of a modus paid to the parson in discharge of tithes sued for by the vicar, pleaded and disallowed in the spiritual court, for they said a modus to the parson would not discharge him against the vicar.—14 Jac. B. R. *Wintell v. Child*. i. 259

19. In a suit in the spiritual court between parson and vicar, prohibition will not be granted.—16 Jac. B. R. *Anon.* i. 303

20. Where the right to the tithes is in question between parson and vicar, no prohibition lies.—21 Jac. B. R. *Guyn v. Merryweather*. iii. 1211

21. The right of tithes between parson and vicar shall be tried in the spiritual court, and *RICHARDSON* said, that though the books made a doubt where it was between the servant of the vicar and the parson, it seemed to him all one.—3 Car. C. B. *Comin's case*. i. 360

22. A defendant to a suit for tithes of wool, &c. prayed a prohibition upon suggestion of a composition in the time of Edw. 1. by which tithes of grain and hay were to belong to the parson, and the vicar should have *preterea alteragium*. It was objected that the parishioner should set out his tithe, and not dispute the title of parson or vicar; but that the vicar should come in the spiritual court *pro interesse suo*; yet, notwithstanding this, and that the vicar refused to claim those tithes, and that always within memory, they had been paid to the parson, yet a prohibition was granted upon the composition.—4 Car. C. B. *Wood v. Greenwood*. i. 368

23. Suits between vicar and impropriator will lie in the spiritual court, although the latter

be not a spiritual person.—5 Car. B. R. *Anon.* i. 370

24. Parson and vicar cannot join in one bill in the exchequer, though that court has jurisdiction of tithes or a modus.—7 Car. Scacc. *Anon.* i. 374

25. If the dispute in the spiritual court be whether tithes be due to the parson or the vicar, no prohibition lies. But if a modus be pleaded against both by the owner, it does lie.—7 Car. B. R. *Fuller v. Huntkins*. i. 375

26. A modus for a farm, payable to the parson, may be good as a discharge of tithes to the vicar, for the parsonage being the original and the vicarage extracted out of it, such a modus may well be paid to him who has the inherent right. Where such a modus is pleaded in the spiritual court to a suit for tithes by the vicar, a prohibition shall be granted, for the disputes between parson and vicar shall not draw a parishioner who has a modus to a trial where such a plea will not be allowed.—19 Car. 2. B. R. *Cole v. Bos*. i. 453

27. If the endowment of a vicarage be lost, small tithes, as of woad, shall be paid to the parson, or vicar according to prescription.—22 Car. 2. B. R. *Tilden v. Walter*. i. 481

28. A prohibition was granted to a suit for tithe hay by the parson, upon suggestion of payment of a modus to the vicar time out of mind, which is evidence of the endowment, and no other proof as to endowment need be given.—22 Car. 2. B. R. *Kettle v. Robson*. i. 482

29. A modus to the rector is a good discharge against the vicar.—28 Car. 2. C. B. *Anon.* i. 509

30. *EYRE* said, it had been ruled at the assizes, that if a man sow his land with clover, and make his profit by the seed, this being a grain, the parson shall have tithe of it; but if he convert it into hay only, and make his profit of the hay, the vicar being endowed of the tithe of hay, shall have it as a small tithe, except only such as is necessarily cut with the corn among which it grew.—5 W. & M. B. R. *Wharton v. Lisle*. i. 579

31. If hemp, rye-grass, &c. are sown for seed, the parson shall have them, as of grain; if mowed as hay, the vicar shall have them, as of herbs.—S. C. i. 579

32. Teasels are a small tithe: and where it appeared to the court that the vicar was endowed of all small tithes, they dismissed the bill of the farmer of the impropriation, though the tithes of teasels had since their introduction always been paid to the impropriator.—11 W. 3. Scacc. *Hunt v. Codrington*. i. 636

33. A payment of a farm modus to the vicar in lieu of all tithes, rectorial, as well as vicarial, held good.—6 Ann. Scacc. *Bulmer v. Bircham*. i. 682

34. The tithes of hemp, flax, and calcees, in the parish of Elm, in Cambridgeshire, and Kimeth, in Norfolk, belong to the rector, and not to the vicar; and the defendants insisting that they were not new improvements, but had been time out of mind sown in the parish, and that the tithes thereof belonged to the rector, and not to the vicar, a bill was dismissed.—10 Ann. Scacc. *Tillotson v. Challis*. i. 700.

35. Where the rector was entitled generally to tithes of corn, grain, hay, peas and beans, it was held, that the vicar was entitled to tithes of peas and beans gathered green and sold.—2 Geo. 2. Scacc. *Newton v. Bird*. i. 719.

36. Where the question is, whether the rector or vicar be entitled to tithes, no prohibition lies, for, in the spiritual court 50 years make a prescription, and therefore evidence that would entitle the vicar to a sentence there upon the endowment, would not entitle him in the temporal court.—4 Geo. B. R. *Drake v. Taylor*. i. 737.

37. The court seemed to be of opinion that payment of a modus to the vicar is good evidence of exemption against the parson.—11 Geo. Scacc. *Woodneth v. Lord Cobham*. i. 802.

38. The tithes of one-third of a parish, due to the vicar and two-thirds to the rector, such third varying each year in succession.—11 Geo. Scacc. *Reynall v. Wills*. i. 808.

39. A bill for tithe hay by a lay impropriator under a grant of Jac. 1. which expressly mentioned tithes of hay, dismissed; no payment being proved either to him or the vicar, but the latter had received moduses from those who had meadow land only, and consequently could pay only for tithes of hay.—2 Geo. 2. Scacc. *Stone v. Rideout and others*. ii. 6.

40. A modus in relation to the tithes due to the parson, may be a good bar to the payment of a small tithe due to the vicar, because all tithes originally belonged to the parson; and the modus, to be good, must have been time out of mind, and therefore must have existed whilst the parson was entitled to the small tithes.—3 Geo. 2. Canc. *Fox v. Ayde*. ii. 21.

41. A rector has a right to all the tithes, and has only to prove himself rector. But it is otherwise with a vicar; for he must shew an actual endowment or evidence of the usage.—20 Geo. 2. Canc. *Carte v. Ball*. ii. 103.

42. Where the right of tithes is admitted, and the only question is to whom they are payable, whether to the rector or vicar, the question is proper to be tried in the spiritual court, and a prohibition will not be granted.

43. A custom relating to a spiritual matter, and not any temporal right, or in bar of any ecclesiastical right, ought to be tried in the spiritual court; because 50 years make a custom

by the ecclesiastical law, and if the courts of law were to judge of such a custom they would judge by a wrong rule.—31 Geo. 2. G. H. *Cheeseman v. Hoby*. i. 152.

44. That tithes are due *jure divino* is a doctrine now exploded: the right therefore depends upon municipal laws. By these laws the demand is given *de communis jure* to the rector, and the vicar's right can be only by endowment or by prescription, and stages and evidence of an endowment. There being no prescription in this case, it brings it to a question of construction upon the words of the endowment.—38 Geo. 2. Canc. *Sims v. Bennett*. i. 172.

45. The tithes of clover seed, saintfoin seed, and rye grass seed, are small tithes. And the vicar being endowed with all small tithes, the court held, he was entitled to those tithes, although the impropriator had immemorially been in the perception of them.—6 Geo. 3. Scacc. *Clarke v. Stapler*. ii. 812.

46. The tithes of clover seed and rye grass seed are small tithes; held, that the vicar was entitled to them, though they had been considered throughout the parish as great tithes, and had always been taken by the rector.—7 Geo. 3. Scacc. *Cartwright v. Bailey*. ii. 821.

47. Where, by the endowment, the rector was entitled to the tithes of corn, hay, wool, lamb, and flax, *duntaxat; cetera quaecunque quandoque quotiescunque accidunt, pertinent ad portionem vicarii*; it was held, that the vicar was entitled to the tithes of agistment of sheep depastured after sheating time.—9 Geo. 3. Scacc. *Willis v. Harvey*. ii. 829.

48. *Prima facie*, the rector is entitled to all great tithes: it is, therefore, incumbent on the vicar to prove his right, contrary to the rector.—12 Geo. 3. Canc. *Clare Hall v. Orwin*. ii. 264.

49. If a vicar proves that he is endowed of the tithe of hay, that endowment entitles him *prima facie* to demand tithe in kind, in the same manner as the common law-right of the rector entitles him; because tithe in kind is the original legal right.—16 Geo. 3. Scacc. *Travis v. Oxtan*. iii. 1248.

50. A vicar endowed with all tithes and all profits of the church (except the lands belonging to the church, and except the tithes of corn, grain, hay, wool, and lambs), held entitled to all other tithes than those excepted; it appearing, from the evidence, that a pension of 10*l.*, alleged to be payable in lieu of tithes, was a pension originally granted to the vicar by the Court of Augmentations during pleasure, and on a subsequent demise of the rectory by the crown charged on the rectory.—19 Geo. 3. Scacc. *Fynes v. Ordoyno*. iii. 1279.

51. A vicar held entitled to the tithes of potatoes, on evidence of usage for all small tithes,

to be paid to the vicar, coupled with an endowment, affording strong presumption that he was entitled to all small tithes.—19 Geo. 3. Scacc. *Bradley v. Brocklebank.* iii. 1281

52. Where a vicar had been in the immemorial perception of all small tithes, except seed-clover, which appeared from the evidence to have been paid to the rector under an erroneous notion that the seed followed the nature of the grass; the court held the vicar entitled to that tithe.—19 Geo. 3. Scacc. *Jeremy v. Strangeways.* iii. 1282

53. Where no endowment can be found, and all small tithes have usually been received by the vicar, the presumption is, that he is endowed with all small tithes, and any new titheable matter arising within the parish, ought to be presumed to have been comprised in the endowment. But this rule ought to be applied with equal attention to the claims of the rector: and, therefore, where the usage had been in opposition to the vicar's claim, the court held the tithe in question (hops) to belong to the rector, and dismissed the vicar's bill.—21 Geo. 3. Scacc. *Jackson v. Woodroffe.* iii. 1302

54. Where an endowment appeared to give the vicar the tithe of hay, but the words were of doubtful sense, and the usage had been contrary, the rector having constantly taken the tithe, the court held, that the vicar was not entitled.—22 Geo. 3. Scacc. *Oglander v. Pomfret, Lord.* iii. 1312

55. Where no endowment can be produced, usage must determine the right to tithes; and where all other small tithes have usually been received by the vicar, he must be presumed to be entitled to small tithes of modern introduction.—23 Geo. 3. Scacc. *Payne v. Powlett.* iii. 1316

56. A modus for agistment-tithe paid to the rector is a bar to the demand of that tithe by the vicar, although by the endowment he has all the small tithes.—30 Geo. 3. Scacc. *Ellis v. Saul.* ii. 360

57. In a suit by the vicar for agistment-tithe, the endowment was lost; but he produced an old extent of the rights of the impropriators, and terriers in support of his claim to all small tithes, except wool and lambs; tithe of agistment had never been paid in the parish; the defendant was in the occupation of land in the parish, and also of the other tithes, which he claimed as rector. The court decreed for the vicar without an issue.

58. In a suit by the vicar for agistment-tithe, the original endowment did not appear; but in support of his claim to small tithes, the vicar produced an old extent or survey, as also terriers and accounts kept by former vicars. Tithe of agistment had never been paid in the parish. The court of exchequer decreed for the vicar,

without directing an issue at law to try his title; but the house of lords reversed this decree.—33 Geo. 3. Scacc. *Garnons v. Barnard.* ii. 380

59. Held, that a defence of the vicarage having been dissolved by a papal bull, and the tithes with which it was endowed re-appropriated and re-annexed to the rectory, might be used as available against other evidence produced in the cause.—51 Geo. 3. Scacc. *Hadden v. Freeman.* ii. 596

60. A rector, in order to narrow an endowment, must give clear and cogent evidence of usage in his favour to induce a presumption of a new agreement between the endowment and the stat. of Eliz.

61. In the absence of evidence of usage, the endowment is the only resort to ascertain the tithes to which the vicar is entitled.—40 Geo. 3. *Awdry v. Smallcombe.* iii. 1365

62. In favour of uninterrupted enjoyment by the perception of tithe hay by plaintiff and his ancestors, although an endowment of the vicarage in 1253 with the said tithe be shewn, it shall be presumed that the tithe came into his hands before the restraining statutes.—53 Geo. 3. B.R. *Countess of Dartmouth v. Roberts.* ii. 655

63. A vicar, proving perception of small tithes (where the crown, and those claiming under it, had never received or dealt with other tithes than those of corn and grain,) held entitled to tithes of agistment, turnips and potatoes; although such tithes had never before been received by his predecessors; and the documentary evidence adduced in support of the vicar's claim, referred to "small tithes," and not "all small tithes;" and although it appeared that a pension or portion was payable out of the vicarage to the superior.

Semble, there must be an express grant of such small tithes to the impropriator, or an express exemption of them out of the vicarage, or an actual perception of them by other persons proved, to take away the vicar's right.—54 Geo. 3. Scacc. *Kennicott v. Watson.* ii. 690

64. A vicar founding his claim to agistment-tithe by shewing that he alone had taken the other small tithes, was holden to have made out his title to that tithe, although the same had never till of late been received or demanded by him or his predecessors, and although in ancient times the crown had conveyed by grant to lay impropriators, tithes, not only of grain and hay, but of herbage, ("decimas feni et herbagii.") Herbage does not, *ex vi termini*, necessarily mean or cover tithe of agistment, unless perception be proved.—56 Geo. 3. Scacc. *Byan v. Booth.* iii. 716

65. An endowment shewing the vicarage to be expressly endowed with hay, is not sufficient to

support a bill for that tithe, without usage; against evidence of a money payment to the rector in lieu of corn and hay.

66. A Grant from the crown (subsequent to the endowment) of lands, including in the general words all the tithes, &c. was holden not sufficient to overturn the vicar's right, without proof of perception.

67. A particular and minute enumeration of several articles in the instrument of endowment, does not preclude the vicar's right to other small tithes not mentioned therein.—56 Geo. 3. Scacc. *Mamby v. Curtis.* iii. 733

68. The lessee of a rector, in whose lease there was an exception of various small tithes *nominatim*, and of all the tithes belonging to the vicar, was holden not entitled to tithe of potatoes, although he had always received some of the small tithes in kind, not mentioned in the lease, either as demised or excepted, and particularly for geese and pigs: his general right being abridged by the operation of the particular exceptions in the lease; for that it was not to be inferred from the lessee of the rector having received certain articles of small tithes, that he was entitled to take tithe of potatoes, although the vicar was not entitled to all the small tithes, nor had enjoyed the tithe in dispute.

69. The ecclesiastical survey is admissible to prove an ancient endowment, and, aided by perception of small tithes, (though not of all) will give a vicar a right to tithes of articles of modern introduction against the lessee of the rector.—56 Geo. 3. Scacc. *Cunliffe, Bart. v. Taylor.* iii. 743

70. Where an endowment gave a vicar all small tithes excepting hay, and also gave him the hay-tithes of a particular district called S., and the vicar had immemorially received the corn tithes of S. without any express endowment, and the rector had in several instances, during the last 80 years, received tithes of seeds of clover and artificial grasses out of S.: held that this was not sufficient to warrant a presumption of an exchange between the rector and vicar of the corn-tithes of S. for the tithes of seeds out of S., there being also some evidence of perception of the latter by the vicar.

71. Where a rector claims in opposition to an express endowment, he must prove his case, the presumption being against him.—57 Geo. 3. Scacc. *Dorman v. Currey.* iii. 817

72. Where an endowment expressly states with what tithes the vicarage is endowed, but other tithes not enumerated in the endowment have always been received by the vicar, a subsequent endowment will be presumed.—57 Geo. 3. Scacc. *Williams v. Price.* iii. 828

73. A vicar may establish his right to tithe of hay by proving constant perception during

living memory, where no perception of the tithe by the rector can be shewn; although the endowment not only negatives the vicar's right, but expressly states the latter to belong to the rector. The court will in such case presume a subsequent endowment.—57 Geo. 3. Scacc. *Parsons v. Bellamy.* iii. 832

74. Where a vicar rests his case on presumption of an endowment from evidence of perception, proof that he has received the tithes claimed from the rest of the parish generally, and even from part of the district in which the defendant's lands are situate, is not sufficient, unless the proof of perception extend to the parts for which the exemption is claimed by the defence; and an issue will be directed. Nor will the ecclesiastical survey (stating the vicar to be entitled to tithe-hay in the parish generally) supply the absence of proof of perception from the particular lands.—57 Geo. 3. Scacc. *Armstrong v. Hewitt.* iii. 835

75. Non-perception of vicarial tithes by either vicar or rector, (the latter admitting the vicar's right, except as to certain titheable articles, there being no third claimant,) in certain parts of the parish throughout which the vicar receives some small tithes, is negative evidence in favour of the vicar's right to all other than the excepted articles.—57 Geo. 3. Scacc. *Leathes v. Newitt.* iii. 841

76. Where a vicar having established his general right to all tithes, except those of corn and grain, throughout the parish, an impropiator claimed the tithe of hay and agistment of a particular township in the parish under a grant from Ed. 6., and proved that no tithes of grass or agistment had within living memory been received by the vicar; yet the court would not decree in favour of the impropiator, without strong evidence from perception or otherwise, that the vicar had lost the right which he had at one time, and that the impropiator had acquired it.—59 Geo. 3. Scacc. *Williamson v. Lord Lonsdale.* iii. 870

77. An old grant from the Crown, "of grain, hay, and herbage," not shewn to have been acted upon, and under which no enjoyment or perception of the specific tithe claimed (agistment) was proved,—held not to be sufficient proof of a title, in persons claiming under the grantee, to the tithe of agistment.—Wood, B. *dissentiente.*—59 Geo. 3. Scacc. *Scott v. Lawson.* iii. 967

78. The vicar is a necessary party to a bill for tithes, by the impropriate rector against an occupier, when the defence made is, that the tithes in question are payable to the vicar.—1 Geo. 4. Canc. *Daves v. Benn.* iii. 1001

79. A vicar having made out a *prima facie* case to all tithes, except corn, grain, and hay, in a suit for agistment-tithe; a defence that it

belonged to the lay impropriator, is not proved, by shewing that agistment-tithe has never been paid to the vicar; and that the lay impropriator is entitled, under a grant from the crown, of tithes of corn, grain, hay, and grass; and that the tithe of agistment is covered by a modus, payable to the impropriator in lieu of tithe of hay and grass.

80. The lay-impropriator is not, under such circumstances, a necessary or proper party defendant, and should demur on that ground; but if he do not, and suffers the cause to go on to a hearing, the court will not give him costs; but in this case not being able to make any decree against him, they dismissed the bill as against him, without costs.—1 & 2 Geo. 4. Scacc. *Williamson v. Hutton.* iii. 1047

81. A vicar (claiming tithes), relying on a special endowment to support his case, is not precluded by the enumeration therein, of specific titheable matters, the tithe of which were thereby assigned to him, from demanding from the occupiers tithes of other articles *ejusdem generis* usually called small tithes, where the vicar can shew that he has received some tithes not included in the enumeration in his endowment, and they are not shewn to be payable to some other person.

82. If such tithes are supposed to be payable to the rector, and he makes no claim, but stands by and allows the vicar to take them, he is bound, as between him and the vicar, by the effect of such tithes.—1 & 2 Geo. 4. Scacc. *Manby v. Lodge.* iii. 1052

83. An usage of rendering one article of small tithe to the rector, will not support his title against the vicar, if it appears to have originated from a mistaken notion that the article in question was a great tithe.—2 Geo. 4. Canc. *Dawes v. Benn.* iii. 1393*

84. Where, in a suit for the vicarial tithes of a particular district within a parish, the defendants, the lessees of the crown's grantee of the land, and his tenant, pleaded that the district had formerly been parcel of the possessions of the hospital of St. John of Jerusalem:—the statutes of 32 Hen. 8. c. 24. and 31 Hen. 8. c. 31:—that the district had come to the crown discharged, and had ever since been enjoyed by its grantees, their lessees and tenants absolutely and wholly acquitted:—and proved that the district had been in the possession of the order in the 22 Ed. 3, 1357; and usage of non-payment, prior to a decree for an account of tithes of the same lands, eight years before, as far back as living memory went, and tendered much evidence of reputation to the same point; but the plaintiff produced an inquisition of the profits of the vicarage, taken in 1314, certifying, that the vicar ought to receive the tithes of wool and lambs of the whole parish, and all

other tithes to the church in any wise belonging, excepting the tithes of corn and hay, and that all the vicars had, ever since the ordination of the vicarage, received all other tithes peaceably, and did so at the then present time:—held, that this instrument afforded evidence that the small tithes had been *de facto* paid to the vicar at the time when it was made, and that the usage proved, had grown up from some unexplained cause after the time of memory; and that it, therefore, overturned the defendants' *prima facie* case; and, an account of the tithes demanded by the bill was decreed.—5 Geo. 4. Scacc. *Donnison v. Elsley.* ff. 1395

PARSONAGE.—See RECTORY.

PARTRIDGES.

1. Tithes are not due for tame partridges or pheasants because *feræ naturæ*. i. 111

2. Nothing *feræ naturæ* is titheable by our law, as partridges, rabbits, or fish in a pond.—9 Car. B. R. *Anon.* i. 389

3. The custom that tithes shall not be paid of pheasants.—15 Car. B. R. *Anon.* i. 398

4. If a man have pheasants and keep them in an inclosed wood, and clip the wings of the pheasants, and from the eggs hatch and bring up young pheasants, no tithes shall be paid of these eggs or young pheasants, because they are not reclaimed, but continue *feræ naturæ*, and would go out of the inclosure if their wings were not clipped. For prohibition it was surmised that no tithe was paid for them in a great circuit called the *Chilterne*, in the county of *Bucks*, and so prescribed in *non decimando*; but the court granted it, because they were *feræ naturæ*.—11 Car. B. R. *Wimbroke v. Evans.* 1 Ro. Abr. 636.

PEAS & BEANS.—See DISCHARGE.

1. Tithes of peas and beans are never paid to the vicar, but always to the impropriator, without an endowment or usage to the contrary, and this decree was affirmed upon an appeal to the House of Lords. The vicar shall have the tithes of turnips and of hasting or green peas growing in the field, and managed with a hoe. Note, the land was field land and ploughed, but it was proved that until within thirty years the vicar had them, and that then the quantity increased, and the impropriator took them. Decree affirmed in the House of Lords.—7 W. 3. Scacc. *Stephens v. Martin.* i. 615

2. Tithes of peas and beans sown in rows and banks, and managed in a garden-like

fashion, which had been usually paid to the vicar when hoed and managed with the hand, shall be paid to him where the ground has been turned with a plough which does the work of a plough and spade; for it is not the nature of the grounds, or the varying of the manner of preparing them, that will alter the right of tithe.—10 Ann. Scacc. & Dom. Proc. *Nicholas v. Elliott*. i. 698

3. The tithes of peas and beans set, drilled, sown, or planted in rows, in a garden-like manner, are small tithes, and the use of a plough, instead of a spade, after a new improvement makes no difference.—4 Geo. Dom. Proc. *Austen v. Nicholas*. i. 734

4. Tithes of peas and beans shall be paid to the impropiator, if the vicar do not shew an endowment or usage to the contrary.—10 Geo. Scacc. *Gumley v. Burt*. i. 799

5. Whether a tithe is great or small is determined by the nature of the article for which the tithe is payable, and not by the mode of its cultivation, or the place where cultivated, or the use to which it is applied; and therefore the tithes of peas and beans, sown in large quantities in fields, though gathered green by the hand, for the food of man, are great tithes, and are included under the term *decimæ garbarum*, excepted in the endowment of the vicar, such a construction being supported by the usage.—33 Geo. 2. Canc. *Sims v. Bennett*. ii. 172

6. There is no definite mode of tithing peas; but on principle the tithe ought to be set out as soon as the crop comes into proper parcels, so that the tithe may be clearly ascertained.—38 Geo. 3. Scacc. *Mantell v. Paine*. iii. 1380

PENSION.

1. A prohibition was refused where a bishop sued for a pension by prescription, although the prescription was denied, and the suit before his own chancellor.—20 Car. 2. B. R. *Bishop of Lincoln v. Smith*. i. 478

2. A suit for a pension may be in the spiritual court, though by prescription, but if denied to be time out of mind, a prohibition will go.—26 Car. 2. B. R. *Anon*. i. 505

3. A pension payable out of a parsonage (even in) lay hands may be sued for in the spiritual court, though a writ of annuity lies also for it at common law.—9 W. 3. B. R. *Rea v. Sanchee & Tipper*. i. 627

4. Pension by prescription may be sued for in the spiritual court, for it might have commenced by a spiritual act.—12 W. 3. B. R. *Anon*. i. 637

PHEASANTS.—See PARTRIDGES.

PIGEONS.

1. By custom tithes shall be paid of pigeons that shall be spent in my house, though not of common right.—14 Jac. *Watley v. Hamberry*. 1 Ro. Abr. 642; but if sold tithes are due.

2. Tithes shall be paid of pigeons, and also of rabbits.—15 Jac. B. R. *Jones' case*. i. 295

3. Prohibition to a suit for tithes of pigeons to be spent in defendant's house.—3 Car. B. R. *Anon*. i. 358

4. Prohibition was granted to a suit for tithes of pigeons consumed by the owner. *Hepden* thought they were titheable if sold.

5. Fish in a pond, conies, deer, are discharged of tithes *de jure*.—*Quere*, if pigeons also.—5 Car. C. B. *Flower v. Vaughan*. i. 370

6. If a man keep a family, and have pigeon holes about his house, and there keep any pigeons, and the young pigeons there increase, and he kills and spends them in his house, he shall not pay any tithes for them. A prohibition granted, and for a consultation pleaded by the parson that he sold them.—13 Car. C. B. *Vincent v. Tutt*. 1 Ro. Abr. 644.

7. No tithes payable for pigeons, but by special custom.—28 Car. 2. C. B. *Stoutfil's case*. i. 509

8. Tithe of pigeons spent in the house, not due. *Holt*, Ch. J. doubting.—5 W. & M. B. R. *Badgerly v. Wood*. i. 581

9. No tithe is due of pigeons eaten by the family.—7 Geo. Scacc. *Hathway v. Edwards*. i. 771

10. No tithes are due for pigeons not sold.—13 Geo. Scacc. *Thompson v. Holt*. i. 826

PIGS.

1. Pigs, in their kind, to be delivered at the will of the owner, after they are nine days old; and if the parson delayed to fetch them, to pay for the keeping afterwards as reason should require or the parties could agree, bad, for uncertainty and unreasonableness, being vitiated by the qualifications of the delivery at will, and the parson to pay for the keep until delivered.—58 Geo. 3. Scacc. *Jenkinson v. Royston*. iii. 896

2. A custom that the landowner should take the two best out of every ten pigs, and the titheowner the next best, held good.—59 Geo. 3. Scacc. *Hall v. Maltby*. iii. 928

3. A custom to pay one pig, where the number farrowed amounted to seven, and did not exceed ten, and to pay nothing when the number was less than seven, held good; the court considering the custom to be beneficial to the parson, from the fecundity of the animal.—38 Geo. 3. Scacc. *Mantell v. Paine*. iii. 1380

POOR'S RATE.

1. A vicar is chargeable to the poor's rate for his tithes.—4 Geo. B. R. *Rex v. Turner*. i. 734

2. The parson as the occupier thereof, although he has agreed with the tenant that he shall retain them, must be assessed for the poor's rate on his tithes.—9 Geo. B. R. *Rex v. the Inhabitants of Lambeth*. i. 788

3. Tithes are liable to be rated to the poor.

4. A sum of money made payable annually, by act of parliament, by the owners of lands to the parson, in lieu of tithes, with a power of distress in case of non-payment, is liable to the poor's rate.—19 Geo. 3. C. B. *Lowndes v. Horne*. ii. 340

5. Fish are titheable by custom, and the proprietors of such tithes are liable to be rated to the relief of the poor.—30 Geo. 3. B. R. *Rex v. Carlyon*. ii. 359

PORTION.—See LEASE—GRANT.

1. A portion of tithes is where a man has any profit of tithes within the parish of another parson or vicar, and its origin was before the council of Lateran, at which time it was lawful for every one to distribute and pay his tithes as he chose, or any portion thereof to any church, according to his best devotion.—7 Edw. 6. *The Dean and Chapter of Bristol's, or the Sergeant's case*. i. 51

2. An assize lies for a portion of tithes.—S. C. *ib.*

3. A portion is a thing in gross by itself, and cannot pass by that which is intended *nomen collectivum*, as a rectory is.—27 El. B. R. *Futter v. Borome*. i. 86

4. Where a parson claims tithes in the parish of another by prescription as a portion, prohibition lies; for he claims only a portion of tithes, and that by prescription, and not merely as parson, or by reason of the parsonage, but by a collateral cause, viz. by prescription, which is a temporal cause and thing.—29 El. *Anon.* i. 91

5. A portion of tithes will pass by the word *hereditaments*. 36 El. B. R. *Hungerford v. Howland*. i. 108

6. A portion of tithes will not be extinct by a union of the rectory, for (*Houghton* said) the portion might be more ancient than the rectory, and so the rector of ancient time have no title to the tithes; for before the council of Lateran, one might pay his tithes to whom he would. 18 Jac. B. R. *Sir Edward Coke's case*. i. 314

7. A payment to the rector of *Rewill*, of twelve bushels of wheat yearly, out of certain

lands in the parish of *Steeple Merton*, as a portion of tithes, or composition for tithes, arising out of the said lands, held good, and decreed, and also that it should be continued for the future.—1652. Scacc. *Baynton v. Bennett*. i. 409

8. Ejectment lies of a portion of tithes.—1656. Scacc. *Hancock v. Price*. i. 417

9. A portion of tithes decreed, which portion was due over and above the tithes due to the rector.—2 W. & M. Scacc. *Knight v. Mene*. i. 565

POTATOES.

1 The title of potatoes, notwithstanding they are sown in fields, or in large quantities, is a small tithe.—16 Geo. 2. Canc. *Smith v. Wyatt*. ii. 91

2. The title of potatoes must be set out where digged, and before being removed.—18 Geo. 3. Scacc. *Bosworth v. Limbrick*. ii. 310

PRÆMONSTRATENSES.—See DISCHARGE

PRESCRIPTION.—See DISCHARGE—CUSTOM.

1. A prescription claimed, by reason of forty years peaceable possession.—6 John. i. 1

2. *Quære*, if a man can prescribe against a statute made within time of memory, as to have tithes of great trees as *silva cedua*; and whether such a prescription can be pleaded in the Spiritual Court.—9 Hen. 6. i. 33

3. Prescription by common law is of time whereof memory runs not, &c.; but by the spiritual law, where one is seised of tithes for twenty or forty years, it is a prescription.—6 Edw. 4. i. 43

4. Prescription by the spiritual law, is a continuance of possession for ten or twenty years.—8 Edw. 4. i. 14

5. Of twenty or thirty years.—22 Edw. 4. i. 47

6. The inhabitants of a hamlet prescribed that time out of mind they had had a chapel of ease within the hamlet, because it was distant from the church of the parish, and with part of their tithes had found a clerk to do divine service in the said chapel, and had also paid a certain sum of money to the parson of the parish for all manner of tithes; held to be a good prescription.—26 El. B. R. *Saer v. Bland*. i. 84

7. One prescribed to pay in one part of his

land the third of the tenth, and in another half the tenth for all manner of tithes. The court inclined to think the prescription good. (It must have been the prescription of a spiritual person.)—29 El. B. R. *Roote's case*. i. 92

8. A prescription for the lord of the manor to pay six pounds in satisfaction of all the tithes of the manor, and in consideration of such payment, to take the tenth shock, as a temporal profit appendre, is good.—39 & 40 El. B. R. *Pigot v. Hewes*. i. 135

9. A prescription to take back thirty sheaves of the tithe corn after they were set out, alleged, but not determined.—11 Jac. C. B. *Jacks v. Cavendish*. i. 220

10. Those who have *libertatem falcandi* in certain land are not occupiers of that land; and therefore as such are not within a prescription of an abbot who held the land discharged for himself, his tenants, farmers, and occupiers of the land.

11. Where a declaration in prohibition alleged that the place where, was a waste parcel of a manor, of which the freehold was in an abbot, who held the land discharged for himself, his tenants, farmers, and occupiers of the said land, and it was pleaded that the land where, was the waste of the abbot, and the freeholders used to have *libertatem falcandi* to make hay, with a traverse of their being tenants, farmers, or occupiers of the land; a replication that they had used to put their beasts, and to mow their land for hay, *per quod* they were occupiers, was upon demurrer held insufficient, for the conclusion was not supported by the premises, for all this they might do, and yet they would not be occupiers, and what comes in the *per quod* is not traversable, nor can it make an issue. Those who had *libertatem falcandi* as appurtenant to their freeholds, were neither farmers nor occupiers under the abbot, but the court thought, that if it had appeared upon the record that they were tenants of the lord of the manor in which, &c. then they would have been discharged within the prescription.—12 Jac. B. R. *Cotes v. Warner*. i. 237

12. It was said by a civilian, that if a bishop have lands in a parish, he shall pay no tithes, unless the parson can prescribe that he should, but the court denied this, and said that the prescription should be *à contrà*, and as a spiritual person he might prescribe in *non decimando*.—14 Jac. Cam. Scacc. *Colt v. Glover*. i. 260

13. A general prescription to be discharged of tithes, will not be supported by evidence of a discharge *dum propriis manibus*, &c.—17 Jac. B. R. *The Earl of Clanrickard v. Lady Denton*. i. 306

14. A particular liberty cannot prescribe in *non decimando*.—17 Jac. B. R. *Johnson v. Bois*. iii. 1210

15. Forty years is a good time of prescription by the spiritual law. If a man prescribe according to the usage of the spiritual court, no prohibition lies upon any suggestion respecting it, if the thing be merely spiritual. 21 Jac. B. R. *Anon*. i. 326

16. If the king alien any land for which he is discharged of tithes by prescription, his patentee shall pay tithes; and the prescription shall not revive, if the lands should come into his hands again by escheat or otherwise. 14 Car. 2. Scacc. *Compost v. —*. i. 437

17. And it seems very extraordinary, that a layman may prescribe upon a presumption of a grant being lost for a portion of tithes in the soil of another, even against the rector of the parish, and yet cannot prescribe for the tithes of his own lands in the same way. 17 Geo. 2. Scacc. *Fanshaw v. More*. ii. 92

18. Issues directed to try, whether a yearly sum was payable as a pension in satisfaction of all tithes arising on certain farms, situate within a chapelry; and whether the owner of the farms for the time being, had from time, &c. been used to have, in respect of the said pension or payment, the tithes of all corn, grain, hay, and other titheable matters arising on the said farms. 18 Geo. 3. Scacc. *Phillips v. Prytherick*. iii. 1273

PRESUMPTION.—See EVIDENCE.

1. The doctrine of presumption is of great importance in the law of the country, and ought to be settled. If you look at the cases in which the question has been discussed, what is necessary to prove title to tithes? some say, you must produce the grant; others, that you must give evidence of the existence of the grant; others say, if there be nothing more than non-payment to the rector, and if the title-deeds of the land-owner contain tithes, but he has not received them, that will not do against a rector: others say, you must prove that the deeds contain a fair description of what you call tithes, and that there has been enjoyment under the title. Some say, that will not do against spiritual rectors: others say that it will, and that a jury may, in such cases, be properly directed to presume title. Others say, it ought to be incumbent upon those who call for the presumption to be raised at law that they have become lawfully entitled to the tithes, to shew, that they have used reasonable diligence to ascertain that the origin of the title could not be shewn.—6 Geo. 4. Canc. *Williams v. Bacon*. iii. 1178

2. Where a payment in lieu of tithes of the ancient demesne lands of a manor was proved to have been paid to and accepted by the rector for the time being for upwards of a century; and from the recitals in a lease in the reign of Cha. 1. there was strong ground to presume that it existed before that period; and there was no evidence of tithes in kind having ever been rendered; yet, it being manifest from certain ordinances and other ancient documents produced and proved in the cause, that the payment had its origin subsequently to the time of legal memory, the court, notwithstanding the antiquity of the payment, decreed an account of the tithes, but without costs.—6 Geo. 4. Scacc. *Fisher v. Lord Graves*. iii. 1180

3. Where a rector rests on his common-law right, and the evidence for the defendant shews, that the rector is not in the perception of all the tithes, some being received by the vicar, and some by other persons, and some lands not paying any tithes at all, every reasonable title against him which the evidence will support, is let in: and the court will decide against the plaintiff, when the evidence is clear, though the defence be informal.—32 Geo. 3. Scacc. *Fryer v. Sims*. iii. 1368

4. On a possession for 250 years, of a portion of tithes by the owners of the lands, though tithes were not expressly mentioned in their title-deeds, the court held, that a conveyance of them prior to the stat. 13 Eliz. ought to be presumed.—38 Geo. 3. B. R. *Oxendon v Skinner*. iii. 1384

5. Possession is so strong a title, that a judge may have emphatically said, he would presume an act of parliament to support and confirm it. Possession is a title to recover upon, and *prima facie* evidences the mere right. But not in this *anomalous*, the case of tithes; for there it evidences no right, though it should be *ultra memoriam hominis quiesca et pacifica*. Where possession evidences a right, there may be reason to presume somewhat to answer a stale and latent title; but where possession does not evidence a right, there seems to be no ground for such a presumption; because that would be to presume a title.—32 Geo. 2. Canc. *Fanshaw v. Rotheram*. ii. 158

6. Though there can be no prescription in *non decimando*, yet if land has been constantly ploughed, and has never paid tithes, it will be open to presumption of a grant.—9 Geo. 3. C. B. Lord Mansfield *v. Clarke*. ii. 233

7. MACDONALD, C. B. The plaintiff having made out a clear title to himself as rector, the defendant insists on exemption from payment of hay and agistment tithe, on the ground of having never paid these tithes; from non-payment he wishes the court to presume a grant or conveyance of these tithes from the lay impropriator.

It is clear that, against an ecclesiastical rector, this defence could never be set up in any shape: whether a lay impropriator should have the same benefit was at first doubted, but that point seems now at rest. Three successive decisions upon it have fully established that there is no difference between a lay and an ecclesiastical rector.—36 Geo. 3. Scacc. *Nagle v. Edwards*. ii. 427

8. Immemorial non-payment of any tithes from a district cannot raise a presumption of an exemption by grant from the lay-rector; but is strong evidence to explain the extent of the grant of the rectory, if at all doubtful.—37 Geo. 3. Scacc. Lord Petre *v. Blencoe*. ii. 467

9. Upon a late decision of the court of exchequer, that a presumption from non-payment of tithes cannot bar even a lay impropriator, the Lord Chancellor, though holding the contrary opinion, would not compel a purchaser to take such a title; and dismissed the bill against him for a specific performance.—40 Geo. 3. Canc. *Rose v. Calland*. ii. 485

10. To a bill for tithes, even by a lay impropriator, prescription in *non decimando*, or presumption from mere retainer, without colour of title, is no defence, and will not be sent to law.—50 Geo. 3. Canc. *Berney v. Harvey*. ii. 585

PROHIBITION.

- I. *What it is.*
- II. *Who may have it.*
- III. *In what cases it lies.*
- IV. *By what courts granted.*
- V. *How obtained.*
- VI. *At what time.*
- VII. *When after sentence.*
- VIII. *To what courts.*
- IX. *Upon what suggestion and proof.*
- X. *Attachment.*
- XI. *Declaration.*
- XII. *Consultation.*
- XIII. *Costs.*
- XIV. *When a second prohibition.*

I. *What it is.*

1. Express prohibitions are of two kinds, the one founded upon a suggestion, the other upon record; upon suggestion, when no plea is depending, but the suggestion is the foundation; upon record, when a plea is pending.

2. Both B. R. and C. B. may grant prohibitions, and the common law is instead of an original, and a prohibition of itself, where no

plea is depending.—6 Jac. C. B. *Langdale's case.* i. 174

3. Before 2 E. 6. all prohibitions to the spiritual court were *quia secuti sunt de laico feodo*, for when a man had a *modus*, the corn and other things were lay things.—11 Jac. C. B. *Norton v. Lyster.* i. 219

4. A prohibition may be to part of a libel.—17 Car. 2. B. R. *Lush v. Webb.* i. 447

5. In prohibition the contempt is but form, and the jury need not give any verdict about it.—8 Geo. Scacc. *Stratford v. Neale.* i. 773

II. Who may have it.

1. Where a libel is against two they may join in a prohibition, and the death of one shall not abate the writ.—36 El. B. R. *Woodroffe v. Bartue.* i. 107

12 Jac. B. R. *Cotes v. Warner.* i. 237

2. One libelled in the spiritual court for tithes under a lease by a vicar: the defendant claimed to be discharged by virtue of a former lease and composition; held that the plaintiff might have a prohibition to stay his own suit, for though where the spiritual court has jurisdiction of the principal matter they shall try the accessory, yet where, as here, the main matter in dispute, which is the lease, is temporal concern, although the original suit for tithes were spiritual, prohibition lies.—12 Jac. B. R. *Wortes v. Clifton.* i. 239

3. Where several moduses are alleged, several prohibitions shall go; where divers are sued for one modus, but one prohibition.—16 Car. C. B. *Anon.* i. 401

III. In what cases it lies.—See Spiritual Court.

1. A grant by the king to a cardinal to sue in the spiritual court for debt, notwithstanding any prohibition.—1 Edw. 3. i. 11

2. The revocation of the above suspension of a prohibition as made against the common law.—2 Edw. 3. i. 12

3. If a rector demand tithes, great or small, so that the fourth part of the value of any church be not demanded:

Item. If a rector demand a mortuary in places where a mortuary has been used to be given:

In these cases the ecclesiastical judge has conusance, notwithstanding the king's prohibition, although it be produced.

The lord the king answered to these articles, that in tithes, obventions, oblations, mortuaries, when the question is as aforesaid, there is no room for a prohibition. And if a clerk or religious person shall have sold his tithes to any one for money, when gathered into his barn,

or any where else, and plea be holden thereof in the spiritual court, the king's prohibition lies; because by sale things spiritual become temporal, and so the tithes pass into chattels.

4. *Item.* If the dispute be concerning the right of tithes having its origin in the right of patronage, and the quantity of those tithes exceed the fourth part of the church, the king's prohibition lies.—13 Edw. 1. s. 4. iv. 4

5. In tithes, oblations, obventions, mortuaries, (when they are propounded under these names,) the king's prohibition does not lie, although, on account of the long withholding of the same, the value must be reckoned in money. But, if a clerk or religious man sell his tithes, when gathered in his barn, or elsewhere, to any man for money; if the money be demanded before a spiritual judge, the king's prohibition lies, for by sale, spiritual things become temporal, and tithes are turned into chattels.—*Articuli cleri.* 9 Edw. 2. s. 1. c. 1. iv. 5

6. If dispute be concerning the right of tithes having its origin in the right of patronage, and the quantity of those tithes amount to the fourth part of the goods of the church, the king's prohibition lies, if the cause come before a judge spiritual.—*Id.* c. 2. iv. 5

7. The owner of the land set out his tithes and a stranger carried them away, it was held that no prohibition would lie to the spiritual court to stay a suit for them, for that the same matter might be pleaded in bar there.—26 El. B. R. *Gerrard's case.* i. 86

8. If the spiritual court refuse a plea to the right of incumbency, the tenant of the land may have prohibition, else he would be twice charged for his tithes.—33 El. B. R. *Green v. Penilden.* i. 101

9. Prohibition upon a suit for tithes, supposing, that the said parson had committed simony in coming to the parsonage; and thereby the church was void, and the tithes not appertaining to him. And it was agreed that a prohibition lay not; for the simony might more aptly be tried in the spiritual court.—40 El. B. R. *Riesby v. Wentworth.* i. 141

10. Where payment of tithe pigeons was offered to be proved in the spiritual court by one witness, but two were there required, prohibition lies.—41 El. C. B. *Mallory v. Marriott.* i. 147

11. No prohibition lies after the king's writ *de excommunicato capiendo*.—8 Jac. C. B. *Case of Prohibitions.* i. 197

12. Definitive sentence was given in the spiritual court for tithes, and also for the treble value; prohibition went as to the treble value.—11 Jac. C. B. *Gerey's case.* i. 214

13. The double value may be sued for in the spiritual court, but if they proceed for the

treble, prohibition lies.—11 Jac. Dean and Chapter of *Windsor v. Webb.* i. 220

14. Sentence was given in the spiritual court that one should recover the single damages, and further that he should recover the double value; resolved that a special prohibition should go, for although the sentence be not expressly that he should recover treble damages, yet in effect it was so.—11 Jac. C. B. *Baldwyn v. Girrie.* i. 220

15. A parson libelled against an innkeeper for tithes of the profits of his kitchen and cellar; prohibition granted; so in a libel for tithe of the interest of money.—11 Jac. B. R. *Dolley v. Davies.* i. 221

16. A prohibition shall not be granted upon a suggestion of having but one witness, which is not sufficient in the spiritual court, for the other cannot deny this; for if he do, he admits against himself that there are two witnesses of the thing in question; but if the spiritual court adjudge otherwise upon the matter than the common law would, prohibition shall be granted.

17. An award pleaded is not sufficient cause for a prohibition; but if they decide upon it in the spiritual court contrary to the common law, prohibition will lie.—12 Jac. B. R. *Parker v. Kemp.* i. 223

18. A suggestion of an award by arbitrators is not sufficient ground for a prohibition to the spiritual court.—12 Jac. B. R. *Reynolds v. Hayes.* i. 233

19. Upon suggestion of a special custom as to paying tithes prohibition lies.—12 Jac. B. R. *Hickes v. Froud.* i. 234

20. Where the question was, which of two was parson, (the determination of the temporal and spiritual law being different,) prohibition to the spiritual court was granted.—13 Jac. B. R. *Glover v. Shedd.* i. 250

21. Where the issue is upon a custom which gives a recompense for the tithes in kind, there, a prohibition ought to be granted; but, where the dispute is upon a custom which gives no recompense, a prohibition ought not to be granted.—15 Jac. B. R. *Gose v. Barnes.* i. 261

—— *Portinger v. Johnson.* S. P. *ib.*

22. A parson granted by deed that one should hold his land discharged of tithes during the parson's life, to be void upon non-payment of a rent reserved; upon a suit in the spiritual court, alleging a breach of the condition, held, that if the parson denied his deed, and they would not allow proof by one witness, prohibition should go, but not if the dispute were whether the rent had been paid or not, unless they proceeded to determine this incidental matter against the rules of the common

law.—16 Jac. B. R. *Barnewell v. Tracy.* i. 295

23. Prohibition to a libel in the spiritual court by parishioners to make proof in *perpetuum rei memoriam*.—16 Jac. C. B. *Napper v. Seward.* i. 303

24. Note, it was said by the court in this case, that a parson might sue for a *modus decimandi* in the spiritual court. So where a parishioner will not set out his tithe in cocks, when by custom he ought: but in such case the suit ought to be specially for not setting out in cocks, and not generally for not setting out. 2 Car. B. R. *Langton's case.* i. 355

25. Where payment of tithes libelled for can be proved by only one witness, prohibition shall go.—3 Car. B. R. *Cicill v. Scott.* i. 357

26. A prohibition ought to be granted upon suggestion of simony.—4 Car. C. B. *Fowler's case.* i. 367

27. If to a suit for tithes in kind in the spiritual court a *modus* be pleaded, which is admitted by the parson, a prohibition will lie; for he ought to have sued for the *modus*, and not for the tithes.—10 Car. B. R. *Taylor v. Wymond.* iii. 1230

28. Where a *modus* was alleged for lambs, prohibition went upon suggestion that the parson refused to accept according to the custom.—11 Car. B. R. *Anon.* i. 382

29. A suit by one of two joint tenants, is no cause for prohibition. 15 Car. B. R. *Anon.* i. 398

30. No prohibition shall be granted to a suit by one of two joint tenants of a rectory, for though our law will not allow it, yet perhaps the spiritual court will.—15 Car. B. R. *Anon.* i. 399

31. Although the exposition of all statutes and letters-patent belongs to the common law, yet, before prohibition granted, it must be suggested that the plea had been pleaded and disallowed in the spiritual court.—15 Car. 2. B. R. *Parker v. Williams.* i. 438

32. The court doubted whether a prohibition should go upon suggestion of a customary payment of tithe fish, for the spiritual court will allow it; *contra* of a custom of discharge of tithes which they will not allow.—15 Car. 2. B. R. *Anon.* i. 438

33. It was said by TWISDEN, J. that although prohibitions had formerly been granted on suggestion that the spiritual court refused proof of a deed, because there was but one witness; yet from the time of JONES, J. downwards, no prohibition had been so granted.—15 Car. 2. B. R. *Prince v. Huett.* i. 440

34. A prohibition, upon suggestion of a *modus* of 3s. for every calf, which on evidence appeared to be for every cow and calf, granted,

for a *modus* being proved, the spiritual court is ousted.—20 Car. 2. B. R. *Mathew's case*. i. 477

35. Upon affidavit that a plea, that the tithes belonged to another who was rector, had been refused in the spiritual court, prohibition will go.—25 Car. 2. B. R. *Kendal v. Pearm*. i. 500

36. A suggestion for a prohibition that a copy of the libel has been denied must be upon oath, and is *quousque* delivery.—26 Car. 2. B. R. *Anon*. i. 502

37. A prohibition *quousque*, &c. lies for refusing a copy of articles as well as a copy of a libel.—32 Car. 2. B. R. *Manling v. Smith*. i. 530

38. Prohibition was granted upon suggestion that the defendant had libelled for tithes upon title to the rectory by letters-patent, whereas the plaintiff had a precedent right by earlier letters-patent; the libel was in the common form, viz. that he was proprietor, &c. without making any title in it, but on the pleading, titles were made on both sides by letters-patent.—34 Car. 2. B. R. *Bonsey v. Lee*. i. 539

39. A parson may be bound to an ecclesiastical duty by custom, and the spiritual court may punish him if he neglect that duty; and a bare prescription only is not sufficient ground for a prohibition, unless it concerns a layman, or a temporal right.—12 W. 3. B. R. *Jones v. Stone*. i. 638

40. Prohibition lies to any ecclesiastical court, for denying a copy of the libel; for the party ought to know whether the matter be within their jurisdiction, and how to answer.—2 Ann. B. R. *Anon*. i. 657

41. A suggestion for a prohibition to a suit for tithes on account of a *modus*, need not shew a compliance, or an offer to comply with the *modus*.—4 Ann. B. R. *Startup v. Dodderidge*. i. 666

42. Where a *modus* has been pleaded in the spiritual court, prohibition shall go, unless it be shewn that the plea has been allowed as well as received.—12 Geo. 1. B. R. *Serjeant v. Trelawney*. iii. 1234

43. Prohibition to a libel for tithes in the spiritual court, the libel stating the tithes to be due by donation, endowment, *custom and prescription*; the libel extending also to an offering of 7*d.* a year, the right to which was admitted to depend on prescription only.—7 Geo. 2. B. R. *Reed v. Doltery*. ii. 54

44. Offerings are only due by custom, and when that custom comes in question, the spiritual court cannot try it, and a prohibition shall go.—7 Geo. 2. *Rex v. Reeves*. ii. 55

45. In a suit in the spiritual court for tithes, the defendant pleaded a *modus*: and it not ap-

pearing whether the plaintiff had proceeded after the plea, the court doubted whether a prohibition would lie.—1 Geo. 3. B. R. *Graham v. Potts*. ii. 185

46. Prohibition granted on affidavit that the defendant to a libel for tithes in kind in the spiritual court, answered on oath or pleaded a *modus*, without its appearing that the *modus* was regularly pleaded below, so as to be put in issue there.—49 Geo. 3. B. R. *French v. Trask*. ii. 568

47. Prohibition denied to the spiritual court upon its rejection of a *modus* set up there of 1*d.* for every turkey laying eggs, and of every tenth egg, in lieu of tithe of turkeys, at the option of the vicar; such *modus* not ascertaining any certain time when the money payment in lieu of the eggs was to be made, in case the option were made to take it in money.—50 Geo. 3. B. R. *Roberts v. Williams*. ii. 575

48. Prohibition granted to an ecclesiastical court on behalf of the plaintiff in that court, in a suit for tithes, a *modus* having been pleaded.—1818. *Hayward v. Culliford*. iii. 1392*

IV. By what courts granted.

1. Both the king's bench and common pleas may grant prohibitions, and the common law is instead of an original, and a prohibition in itself, where no plea is depending.—2 Jac. i. 159

2. It was made a rule of court in B. R. that all moving for prohibitions, should inquire if such motions had before been made in C. B. and inform the court of the success thereof, but they did not regard the Exchequer, conceiving they had no power to grant any.—16 Car. 2. B. R. *Anon*. i. 442

V. How obtained.

1. A copy of the libel shall be delivered to the judge before a prohibition granted, and under the copy of the said libel shall be written the suggestion wherefore the party so demandeth the said prohibition: and in case the said suggestion, by two honest and sufficient witnesses at the least, be not proved true in the court where the said prohibition shall be so granted, within six months next following after the said prohibition shall be so granted and awarded, that then the party that is letted or hindered of his or their suit in the ecclesiastical court by such prohibition, shall, upon his or their request and suit, without delay, have a consultation granted in the same case, in the court where the said prohibition was granted; and shall also recover double costs and damages against the party that so pursued the

said prohibition, the said costs and damages to be assigned or assessed by the court where the said consultation shall be so granted; for which costs and damages the party to whom they shall be awarded may have an action of debt by bill, plaint, or information, in any of the king's courts of record, wherein the defendant shall not wage his or their law, nor have any essoin or protection allowed or admitted.—2 & 3 Edw. 6. c. 13. s. 14. iv. 88

2. In doubtful cases, the first rule usually is to shew cause why a prohibition should not go, the next that it shall go *nisi*, and then it is made absolute.—14 Car. 2. B. R. *Anon.* i. 436

3. Where the court is divided no prohibition.—3 Jac. 2. B. R. *Buckworth v. Salmon.* i. 552

4. All prohibitions are to be granted upon some suggestion which is to be brought into the office.—1 Ann. B. R. *Anon.* i. 645

VI. At what time.

1. No prohibition shall be granted to court christian till after *lis sit contestata*, which is when the defendant has answered the libel.—31 Hen. 6. i. 36

2. A prohibition may be granted in vacation.—5 Jac. *Nicholas Fuller's case.* i. 168

3. No prohibition will be granted on the last day of a term, but a rule to stay proceedings till the next.—2 Car. B. R. *Anon.* i. 355

4. Upon suggestion of barren ground or unity of possession, prohibition shall go after such plea pleaded in the spiritual court and disallowed, but not before.—14 Car. 2. B. R. *Cookson's case.* i. 438

5. Upon suggestion of a *modus*, the court will grant prohibition without notice to the other party.—25 Car. 2. B. R. *Anon.* i. 500

6. No prohibition to inferior courts after judgment. Qu.—30 Car. 2. B. R. *Jackson v. Nele.* i. 520

7. No prohibition shall be granted for citing out of the diocese after plea pleaded.—33 Car. 2. B. R. *Anon.* i. 530

8. Wherever the matter suggested for a prohibition is foreign to the libel, it must be pleaded below, before a prohibition can be granted; but it is otherwise where the cause of the prohibition appears on the face of the libel.—11 W. 3. B. R. *Godfrey v. Lewellin.* i. 635

9. Holt, C. J. and the court held, that a prohibition should not be granted upon suggestion of a custom, unless it had been pleaded below, because perhaps they might admit the plea.—12 W. 3. B. R. *Anon.* i. 639

VII. When after sentence.—See Boundaries.

1. A prohibition to the spiritual court after sentence, which had refused to allow a *modus* of 12d., which had been pleaded in lieu of tithes in kind of a close.—6 & 7 Edw. 6. i. 51

2. No prohibition shall be granted after sentence, nor to the defendant in an appeal.—40 El. C. B. *Somerset v. Markham.* i. 139

3. Prohibition upon suggestion of a *modus* (though pleaded in the spiritual court), denied after sentence there.—15 Car. B. R. *Anon.* i. 400

4. Prohibition in suit for tithe of mills on the right will not lie after sentence; so, though the court takes notice that in the spiritual court they allow no *modus*, yet a *modus* must be suggested, as pleaded in time.—22 Car. 2. B. R. *Messenger v. Jennings.* i. 487

5. Prohibition will be granted after sentence, if the spiritual court had no jurisdiction of the libel; but not otherwise.—25 Car. 2. B. R. *Anon.* i. 500

6. Prohibition after sentence and appeal where no jurisdiction.—32 Car 2. *Tomlinson v. Freeman.* i. 530

7. On a trial in prohibition if lands be found to be not barren, and a consultation be awarded in a suit for tithes of such land, and the spiritual court (upon appeal to the Arches) proceed contrary to the verdict at law, a prohibition shall go, though after sentence.—34 Car. 2. B. R. *Owen's case.* i. 539

8. A prohibition lies to the spiritual court, after sentence and although the libel be for matter within their jurisdiction, if a temporal matter become incidental, and they refuse such proofs as the temporal courts allow, as if they refuse proof of a fact by a single witness; but for prohibition it must be alleged that such proof was offered, and refused.—2 W. & M. B. R. *Shotter v. Friend.* i. 568

9. Where it appears upon the face of the libel that the spiritual court has not consue, prohibition will be granted after sentence.—10 W. 3. B. R. *Gardner v. Root.* i. 628

10. Where it appears from the libel or proceedings in the cause that the consue of it does not belong to the spiritual court, a prohibition may be had after sentence; and this holds in all cases, except where one is sued out of his diocese, in which by pleading the jurisdiction is owned.—11 W. 3. B. R. *Godfrey v. Lewellin.* i. 635

11. If the spiritual court have no consue, a prohibition will lie after sentence in every case except for suing out of the diocese.—1 Ann. B. R. *Anon.* i. 645

12. Even in case of a *modus*, if the spiritual court proceed to sentence, it is then too late for a prohibition, though it is never too late *pro defectu jurisdictionis*.—4 Geo. Scacc. *Offley v. Whitehall*. i. 732

13. A prohibition lies to an inferior court, after sentence given, where it appears upon the face of the proceedings that the matter was not within the jurisdiction of the court.—5 Geo. B. R. *Asgill v. Hunt*. i. 747

14. No prohibition lies after sentence, on the ground that the ecclesiastical judge was judging in his own cause, even after sentence by default; for there is a remedy by appeal in such case.—7 Geo. B. R. *Owen v. Hughes*. i. 765

15. Where there is a want of jurisdiction, prohibition granted, even after sentence.—7 Geo. 2. *Rex v. Reeves*. ii. 55

16. Prohibition denied after sentence, where the defendant below had set up several customs respecting tithes, but had submitted to trial.

17. Where a matter is properly triable at common law, prohibition lies before sentence. But if a party submit to trial, it is afterwards too late.

18. Prohibition lies after sentence, if the ecclesiastical court has no cognizance of the cause; otherwise, if there be only a defect of trial.—16 Geo. 3. B. R. *Full v. Hutchins*. ii. 308

19. Where a *modus* is pleaded in an ecclesiastical court, a prohibition may be granted any time before final sentence.

20. A prohibition will be granted to a court of appeal, where it appears that such court has no jurisdiction over the subject-matter, even after it has remitted the suit to the court below, and awarded costs against the appellant, and though the party applying for the prohibition was the appellant in that court.—27 Geo. 3. B. R. *Darby v. Cosens*. ii. 354

21. After sentence in the ecclesiastical court in a matter of tithe, where the question turned upon the construction of an act of parliament; upon a doubt raised whether that court had not misconstrued the act, this court directed the plaintiff to declare in prohibition, for the more solemn adjudication of the question, whether, supposing the court below to have misconstrued the act, a prohibition should go after sentence in a matter in which the court below had original jurisdiction, or whether it was only a ground of appeal.—43 Geo. 3. B. R. *Gare v. Gapper*. ii. 512

22. Where the spiritual court incidentally determines any matter of common law conusance, such as the construction of an act of parliament, otherwise than the common law requires, prohibition lies after sentence; although the

objection do not appear upon the face of the libel, but is collected from the whole of the proceedings below.—44 Geo. 3. B. R. *Gould v. Gapper*. ii. 524

23. On motion for a prohibition after sentence, on the ground that there were two questions raised by the proceedings, which the ecclesiastical court had no jurisdiction to try: viz. 1st, whether a part of the land, in respect of which tithe was claimed was within the parish; and 2dly, whether other part of the land was natural meadow land, and whether it was covered by a *modus*; it not appearing from the sentence or suggestion that the spiritual court had proceeded to try the question of boundary, the court of king's bench held, that the party applying for the prohibition ought not to have laid by and suffered the question, with regard to the meadow land, to be tried, and therefore came too late after sentence.—48 Geo. 3. B. R. *Stainbank v. Bradshaw*. ii. 568

VIII. To what Courts.

1. The court inclined strongly an action of debt for tithes would not lie by *justicies*, being but a commission, which is always *stricti juris*, and must be understood to give that court power only in actions of debt arising *ex contractu*, and not *ex delicto*; and the court directed rather to bring a writ of *faux judgment* in C. B. which being depending, the court refused to grant any prohibition otherwise, else they agreed it might be granted as well after judgment as before, and the jurisdiction of that court may well enough be examined in a prohibition.—20 Car. 2. B. R. *Bishop v. Corbet*. i. 477

2. Prohibition will lie from B. R. to the ecclesiastical court of *Durham*, as well as *Habeas Corpus*, the suit being *contra coronam*.—24 Car. 2. B. R. *Wall v. Bezicr*. i. 495

IX. Upon what Suggestion and Proof.

1. Under the libel shall be written the suggestion wherefore the party demands the prohibition; and in case it be not proved by two witnesses at the least within six months after the prohibition granted, a consultation shall go.—2 & 3 Edw. 6. c. 13. s. 14. iv. 88

2. If a surmise for a prohibition be insufficient, the other party needs not demur, but as *amicus curie* shew the same to the court, and they shall discharge him.—25 & 26 El. C. P. *Sutton v. Dowse*. i. 83

3. Prohibition to suit in the spiritual court for tithes, on suggestion, that part of lands were charity lands, and discharged of tithes, and other part was barren heath and waste land.

On application for consultation, on the ground that the suggestions were not proved, it was referred to the master to inquire, whether the suggestions had been proved within six months.—26 El. Canc. *Bullock v. Wood.* iii. 1201

4. Where a custom was suggested, "for all the parish," and the proof was "except for five farms," it was held that it failed, for it might be that the lands in question were parcel of the five farms, but if it had been proved that they were not parcel, it had been otherwise.—30 El. B. R. *Bennet v. Shortwright.* i. 94

5. The surmise is as a writ, for which, if variance be betwixt the same and the declaration, all is naught.—31 El. B. R. *Gomersal v. Bishop.* i. 97

6. Hearsay is allowed for proof of a suggestion.—33 El. B. R. *Stranshaw v. Cullington.* i. 101

7. A suggestion of a *modus* omitting to state "that they usually paid, &c." which is issuable, is not good in prohibition, and a consultation shall be awarded for the defect.—37 El. *Jesop v. Payne.* i. 110

8. Proof in prohibition need not be precise, but it is sufficient to prove enough to shew that the parson ought not to have tithes in kind; so if a prescription be that a parson holds 100 acres of land in lieu of tithes, and the proof be that he so holds 60, it is sufficient.—42 El. B. R. *Austen v. Pigot.* i. 151

9. Hearsay is sufficient proof of a surmise, within 2 Edw. 6.—43 El. B. R. *Beal v. Webb.* i. 153

10. For prohibition *moduses* were suggested for wool and lambs, but proved for lambs only; held that it should stand as to lambs, for it is but a prescription contained in a suggestion, to give the temporal court jurisdiction; but if it had been a prescription in defence or by way of plea in an original action, the variance would have been fatal.—2 Jac. B. R. *Anon.* i. 159

11. A variance between the suggestion and the libel, where the plaintiff in prohibition prescribes in *non decimando*, is not material; *secus* where in *modo decimandi*.—3 Jac. B. R. *Hutton v. Barnes.* i. 163

12. A suggestion of an agreement to retain tithes need not be proved within six months, for such proof only goes to a *modus*.—5 Jac. B. R. *Tanner v. Small.* i. 171

13. Where a *modus* is suggested, it must be proved within six months, or a consultation will be granted.—11 Jac. C. B. *Gippe's case.* i. 214

14. The six months in which a surmise in prohibition is to be proved are calendar months.—14 Jac. C. B. *Copley v. Collins.* i. 260

15. Where a suggestion is to be proved by two witnesses under 2 Edw. 6. it is sufficient that they have known it to be so, or that the

common fame is so. Where a suggestion was that the inhabitants of D. had paid a *modus*, and the proof was only that he himself had paid it, yet held sufficient to oust the spiritual court of conusance.—15 Jac. C. B. *Anon.* i. 270

16. Though precise proof need not be made, yet the party may swear that it has been ever since the statute of 31 H. 8. reputed to be discharged by unity, or that he has heard it commonly reported to be so, or the like. And DODDERIDGE said, that he had known several precedents in this court of proof made in that manner.—17 Jac. B. R. *Congley v. Hall.* i. 311

17. A suggestion that the lands of which tithes are demanded lie in a different parish from that alleged in the libel need not be proved within six months.—17 Jac. B. R. *Wood's case.* iii. 1210

18. In C. B. where tithe is confessed to be due, but a *modus* is alleged, a suggestion must be proved within six months; but if it be alleged that no tithe is due by law, as of timber, &c. it need not.—17 Jac. C. B. *Anon.* i. 312

19. Proof of a suggestion is sufficient, if it be probable, and not that strict and conclusive proof which is necessary upon the trial before a jury.—21 Jac. B. R. *Pagett's case.* i. 328

20. The six months within which a suggestion is to be proved means half-a-year, and not months of 28 days; and where the last day was on a Sunday, proof on the next day was held good.—2 Car. C. B. *Anon.* i. 357

21. A suggestion of a *modus* of 4*d.* for every cow, and proof that some paid 7*d.* and others 6*d.* is void for uncertainty; but if a *modus* of 40*s.* be suggested and one of 20*s.* proved, it is good, as it is but to give jurisdiction.

22. Slight proof, as, "that he thinks, or believes," is sufficient in a suggestion: no proof can be added after the six months, but better proof may be supplied within that time, and if so made, may be certified afterwards.—4 Car. C. B. *Goddard v. Tiler.* i. 366

23. Prohibition at common law, as upon an agreement (and not upon 2 Edw. 6.) need not be proved within six months.—5 Car. C. B. *Johnson's case.* i. 369

24. A suggestion of barren land within 2 Edw. 6. must be proved.—6 Car. 2. *Stroud v. Hoskins.* i. 372

25. Where a *modus* is suggested, it need not be stated that it was pleaded and refused below, for the court will not intend that they would allow a *modus* there.—17 Car. 2. B. R. *Lush v. Webb.* i. 447

26. In a suit for tithes of mills, the court held that a suggestion that they were ancient, need not be proved within six months, that provision of 2 Edw. 6. extending only to a *modus*; but they ordered that if the plaintiff did not

declare upon his suggestion a consultation should go by the first day of the next term.—

18 Car. 2. B. R. *Eaton v. Naylor*. i. 450

27. A suggestion that the lands lie in C. and not in the parish in the libel, is in the negative, and therefore need not be proved within six months.—20 Car. 2. B. R. *Gandy v. Smith*. i. 459

28. The months in prohibition shall be calendar months.—27 Car. 2. C. B. *Sharp v. Hubbard*. i. 508

29. A suggestion of barren land newly improved ought to be proved within six months, in the same manner as all affirmative suggestions.—32 Car. 2. B. R. *Thomas v. Gifford*. i. 526

30. The six months required by 2 Edw. 6. c. 13. for proving the suggestion, shall be reckoned from the issuing of the prohibition.

31. The suggestion must be entered in the office, else a consultation.—35 Car. 2. B. R. *Straker v. Baynes*. i. 542

32. A suggestion of a *modus* must be proved within six months.—10 W. 3. B. R. *Gardner v. Root*. i. 628

33. A *modus* suggested must be proved within six months, or a consultation shall go.—10 W. 3. B. R. *Pool v. Gardner*. i. 630

34. Where the matter suggested for a prohibition appears on the face of the libel, an affidavit is not required; but if it do not appear there, or the prohibition is as to more than appears, an affidavit of the truth is necessary.—11 W. 3. B. R. *Godfrey v. Lewellin*. i. 635

35. If a suggestion, though good in law, appear to the court to be notoriously false in fact, they will not grant a prohibition.—12 W. 3. B. R. *Smith v. Wallett*. i. 638

36. Prohibition not to go to the spiritual court without suggestion.—12 W. 3. B. R. *Blaxton v. Honore*. i. 639

37. The six months within which a suggestion is to be proved, are to be reckoned from the *teste* of the prohibition, and vacation counts as well as term.

38. The stat. 2 Edw. 6. extends to suggestions for prohibition in cases respecting small tithes as well as great.—4 Ann. B. R. *Foy v. Lister*. i. 670

39. Though no proof of a suggestion is necessary where the suit is for tithes contrary to common right, or the contract of the party, yet in case of a suggestion of barren land, it ought to be proved, as well as upon a *modus*.—5 Ann. C. B. *Anon.* i. 681

X. Attachment.

1. Where a parson libels again upon a claim with respect to which a prohibition has been granted, an attachment shall issue.—30 El. C. B. *Stafford's case*. i. 95

2. If there be a libel for tithes of one year, or if one be sued for tithes where a general custom is alleged in a parish, and prohibition granted, and before it be decided upon, a libel for tithes of another year, or another parishioner be sued within the same custom, attachment shall be granted.—38 El. *Sharington v. Fleetwood*. i. 111

3. If after a prohibition granted, the parson libel again for the same tithes, an attachment lies, and also (according to Coke) an action on the case for the party grieved.—12 Jac. B. R. *Downes v. Hackseby*. i. 246

4. While a prohibition is depending on suggestion of a *modus*, an attachment will be granted, if a suit be instituted in the spiritual court for tithes which have subsequently accrued.—17 Jac. B. R. *Linge v. Gunter*. iii. 1210

5. In an attachment upon a prohibition, the jury found that the suit was prosecuted after prohibition delivered, and gave damages and costs; and on motion in arrest of judgment it was held good.—15 Car. B. R. *Facy v. Lange*. i. 399

XI. Declaration.

1. Though the declaration in an attachment on a prohibition ought to allege in the usual form that a prohibition was delivered, yet it is not traversable.—9 Hen. 6. i. 33

2. Form of declaration in prohibition.—17 El. *Soby v. Molins*. i. 60

3. In prohibition a variance between the surmise (which is a writ) and the declaration, is fatal.—31 El. B. R. *Gomersal v. Bishop*. i. 97

4. Where a vicar libelled severally against persons, a joint prohibition is not good, but the matter being on a custom triable at common law, the court refused a consultation, and directed that several declarations should be made, and the proceedings be as upon several prohibitions.—6 Jac. B. R. *Burges v. Ashton*. i. 173

5. Where to a libel against three a joint prohibition issued, it was held that they must declare severally.—8 Jac. C. B. *Parker's case*. i. 197

6. Though a demurrer to a declaration in prohibition be bad, yet if the declaration itself be not good, a consultation shall go.—13 Jac. B. R. *Mascall v. Price*. i. 225

7. Two may be joined in a prohibition if they be joined in the libel, but they ought to sever in the declaration.—3 Car. C. B. *Wood v. Symons*. i. 359

8. There may be a joint prohibition to several libels, but the plaintiffs must declare severally.—22 Car. 2. B. R. *Amiles v. Chambers*. i. 480

9. The court thought that in a joint prohibition tenants in common must declare severally, because tithes concern inheritance, and not bare profits; but they left the other to demur.—23 Car. 2. C. B. *Thornton v. Teisdall*. i. 494

10. Two may join in prohibition, though the *gravamen* be several, but they must sever in declaration.—26 Car. 2. B. R. *Anon.* i. 505

11. A declaration in prohibition ought not to vary from the suggestion; but the court allowed the plaintiff to discontinue upon payment of costs, and to pray another prohibition. 1 Ann. B. R. *Harrow's case*. i. 647

12. When the proceedings in prohibition are for damages, then it must be alleged that the prohibition was delivered and a *venue* laid, but where it is to maintain the jurisdiction of the common law court, it is not necessary. 8 Ann. B. R. *Bishop v. Eagle*. i. 694

XII. Consultation.—See Suggestion.

1. A *procedendo* shall be granted after prohibition, when it shall appear from the libel that the complainant has no remedy in the temporal court, and that the conusance of the cause belongs to the spiritual court.—18 Edw. 1. i. 3

St. 24 Edw. 1. iv. 4

2. Where a consultation is once duly granted upon a prohibition made to the judge of the holy church, the same judge may proceed in the cause by virtue of the same consultation, notwithstanding any other prohibition thereupon to him delivered, provided always that the matter in the libel of the said cause be not engrossed, enlarged, or otherwise changed.—50 Edw. 3. c. 4. iv. 10

3. One consultation granted, is sufficient by the law in the same cause or plaint.—50 E. 3. iv. 10

4. On a prohibition to a suit for tithes of wheat, the land being suggested to be lately improved, was proved so, but that tithe of wool and lambs had been always paid for it; though by the statute the same tithes continue payable for seven years, the parson cannot have a consultation, for he has not sued for tithes of these.—1 & 2 El. *Pelles v. Saunderson*. i. 57

5. Form of writ of consultation. i. 63

6. Form of writ of *scire facias quare consultatio non*. i. 65

7. The form of proceeding to attain a consultation by way of a bill of attachment upon a prohibition is not so regular and good as the ancient method upon a writ of *scire facias quare consultatio non debeat concedi post prohibitionem*.—17 El. *Soby v. Molins*. i. 64

8. Where in prohibition a *modus* was found by the jury, but payable on a different day from

that suggested; held that no consultation should be granted, for though the day of payment were mistaken, yet it appeared to the court, that no tithes in kind were due, for which the suit was in the spiritual court, which therefore had no jurisdiction, for the trial of the custom *de modo decimandi* belongs to the common law.—19 El. Case *De modo decimandi*. i. 81

9. No consultation can be granted by all the judges out of term, nor in term, by any of them out of court.

10. When a libel in the spiritual court contains many articles, if any do not belong to the conusance of that court, a prohibition may be granted generally, and upon motion made, consultation may be granted, as to those things which do belong to the spiritual jurisdiction.—5 Jac. *Nicholas Fuller's case*. i. 168

11. A consultation shall never be granted, if it appear to the court upon the whole matter that no tithes ought to be paid.—12 Jac. B. R. *Cotes v. Warner*. i. 237

12. Where a custom is only found in part, a consultation shall only go for the part not found.—14 Jac. B. R. *Berry's case*. i. 257

13. After a prohibition *nisi* granted, and the suggestion put in, the court may overrule the suggestion, without compelling the other party to take issue or demurrer.—15 Car. 2. B. R. *Webb v. Dyer*. i. 440

14. Where a *modus* of 20s. is suggested and one of 40s. proved, the court would have granted a consultation, if the parties had not amended by consent.—17 Car. 2. B. R. *Lush v. Webb*. i. 447

15. If a *modus* be not proved as laid by the plaintiff in a suit in prohibition, there must be a verdict for the defendant. But if any *modus* be found, though different from that laid, it is a ground for the court to refuse a consultation.—27 Geo. 3. B. R. *Brock v. Richardson*. ii. 353

XII. Costs.

1. Where a suggestion is partly of a *modus*, which requires proof within six months, and partly of a contract which does not, and the suggestion is entire, no costs can be given upon default of proof within the time.—5 Jac. C. B. *Cobb v. Hunt*. i. 171

2. After consultation awarded, the spiritual court cannot give costs of the proceedings in the temporal court.—17 Jac. B. R. *Reade v. Stonehouse*. i. 311

3. In prohibition the suggestion was not proved within six months, but the parson notwithstanding went to an issue, which was decided against him; held that he was not in such case entitled to double costs, having neglected to pray a consultation, for want of proof

of the suggestion.—2 Car. B. R. *Watkinson v. Pacy*. i. 355

4. Where costs are granted under the stat. they are not made part of the rule but follow of consequence.—4 Ann. B. R. *Foy v. Lister*. i. 670

5. Costs in prohibition are to be given from the first motion, and not from the time of declaring only.—4 Geo. Scacc. *Sir H. Haughton v. Starkey*. i. 734

6. A custom alleged in a suit in prohibition differs from other allegations of customs, for in those the custom must be proved exactly as it is laid, otherwise the party fails; but in prohibition the defendant is considered as an actor, suing for a consultation, and therefore, if upon the whole it appear to the court that there is a modus, they cannot grant a consultation; and it has been determined that if the jury should find what amounts to a modus, the court cannot award a consultation; taking this case in any light, the court cannot award a consultation; and if 6*d.* is insisted on, and but 4*d.* found due, yet there shall not be a consultation, for the practice is, that in such cases the judge always certifies that they have proved a modus.—10 Geo. 2. B. R. *Sharp v. Lowther*. ii. 62

7. Where a plaintiff is put to declare in prohibition, and is nonsuited at the assizes, the defendant is only entitled to his single costs under the stat. 8 & 9 W. 3. c. 11. s. 3. and not to double costs under the stat. 2 & 3 Ed. 6. c. 13. s. 14. which latter only applies to cases where the party who is hindered of his suit in the ecclesiastical court by the prohibition acquiesces in it: and then the party obtaining it must, within six calendar months, verify his suggestion by the depositions of two witnesses in the court which granted the prohibition; otherwise the party hindered shall have a consultation and double costs and damages.—52 Geo. 3. B. R. *Trask v. French*. ii. 650

XIV. When a second Prohibition.—See Consultation.

1. If a consultation has been granted by one court of competent jurisdiction, another court will not grant a second prohibition, for the same cause.—34 El. B. R. *Lyss v. Watts*. i. 106

2. Prohibition shall be granted after consultation, if it were not granted upon examination of the matter, but for the insufficiency of the proceedings.—42 El. B. R. *Sibley v. Crawley*. i. 151

3. A customary payment of 10*s.* was alleged, and although four consultations had been before awarded upon the same suggestion, for want of proof within six months, yet the court granted a prohibition, as the former consulta-

tions were not upon the right or trial of the custom, and besides the tithes of another year were demanded.—5 Jac. B. R. *Cox v. Senor*. i. 171

4. When a consultation has been lawfully granted, no new prohibition shall issue upon the same libel, unless it be upon default in form, by misprision of the clerk, or by mispleading any statute, or such like.—7 Jac. B. R. *Anon.* i. 191

5. One may have a second prohibition after consultation, if it were not duly granted: so if a libel be for tithes of divers years, and a consultation granted for part of the years, yet he may have a prohibition for the rest.—9 Jac. C. B. *Dorwood v. Brikinden*. i. 199

6. A modus suggested, and a consultation granted for want of proof within six months; another prohibition shall not be granted upon an appeal; but if a consultation be not well granted, there a fresh prohibition lies.—14 Jac. B. R. *Anon.* i. 254

7. After plaintiff in prohibition nonsuited, judgment was given against him in the spiritual court on the original libel, from which he appealed, and applied for another prohibition, varying the terms of the modus formerly suggested; held, that another prohibition should not go.—14 Jac. B. R. *Bigg's case*. i. 255

8. A prohibition was granted, and upon issue joined, the plaintiff was nonsuited and a consultation awarded; the defendant in the spiritual court then pleaded the same matter as he had surmised for prohibition which the spiritual court was proceeding to try; held that the parson should have another prohibition to the spiritual court to stay proceedings upon a plea which had been finally determined in the proper court.—16 Jac. C. B. *Farmer's case*. i. 296

9. A prohibition is granted after consultation, if there be any material addition to the libel.—17 Jac. B. R. *The Earl of Clanrickard v. Lady Denton*. i. 306

10. If there be an appeal after consultation, another prohibition may be granted, unless it be upon the prayer of the appellant, or the consultation were upon the matter and substance of the suit: but *quære*, the construction to be put upon the words "the same judge" in the 50 E. 3. c. 4.—1 Car. B. R. *Bowry v. Wallington*. i. 337

11. If defendant in prohibition die, his executors may proceed in the spiritual court; but the plaintiff may have a fresh prohibition against them.—4 Car. C. B. *Stone v. Walsingham*. i. 367

12. A consultation being granted for not proving the suggestion by two witnesses, according to the statute of 2 E. 6. and not upon the substance of the suggestion for want of its verity, or for the insufficiency thereof, it is not

within the statute of 50 E. 3. c. 4. for that is intended where consultation is granted upon the substance of the suggestion being proved to be insufficient in verdict or nonsuit after evidence, and not where it is granted for the insufficiency of the form of the suggestion, or in the proceeding thereupon.—6 Car. B. R. *Stroud v. Hoskins.* i. 372

13. No new prohibition shall be granted after nonsuit upon a trial of a suggestion, though it be sworn to have been by default of a witness.—14 Car. 2. B. R. *Tradaham v.* i. 436

14. Where consultation has been granted for want of proof of the suggestion, and not on the right, another prohibition may be granted at the discretion of the court, upon the same suggestion.—22 Car. 2. B. R. *Kettle v. Robson.* i. 482

15. Prohibition was denied upon suggestion of a modus of 2d. for every lamb which fell on a particular farm, on the ground that a consultation had been granted in the same suit on suggestion of a modus for 2d. for every lamb which fell in the parish, and so within 50 E. 3. But if this matter had been found by the verdict no consultation had been granted.—1 W. & M. C. B. *Anon.* i. 559

16. Where a consultation had been granted or default of proving a modus suggested, in proper time and not upon the merits, a second prohibition was granted after sentence, upon payment of double costs, according to the stat.—10 W. 3. B. R. *Pool v. Gardner.* i. 630

PURPRESTURE.

1. A *purpresture* was the felling, not plucking up of timber, and was not regarded by the forest laws with so much severity as an assart.

2. Under a grant of tithes arising from lands *de novo assartatis et assartandis*, no tithes are payable in respect of lands occupied by the keeper, or lands inclosed by a private person, by encroachment on the forest, for that is a *purpresture*, and not an assart.—38 Geo. 3. Scacc. *Parry v. Harvey.* iii. 1376

QUAKER.

1. Where a quaker refused to answer a bill for tithes upon oath, it was taken *pro confesso*, and the master had a commission to inquire what was due.—29 Car. 2. Canc. *Anon.* i. 515

2. If quakers refuse to pay tithes, &c. justices, on stating what is due, may compel them thereto, if the sum be under 10l.—7 & 8 W. 3. c. 34. iv. 192

3. Persons aggrieved may appeal to the quarter-sessions.—§ 4.

4. No distress till the appeal be determined.—§ 5.

5. The remedy in the spiritual court against contumacious quakers under 27 H. 8. c. 20. is not taken away by 7 & 8 W. 3. c. 34. which gives a remedy in the temporal courts.—9 W. 3. B. R. *Rex v. Sanchez and Tipper.* i. 627

6. Whereas by the said act made in the seventh year of the reign of King William the third, a remedy is provided for the recovery of tithes and church rates, where any quaker should refuse to pay the same; be it enacted by the authority aforesaid, that such remedy shall be and is hereby extended, and the like remedy shall and may be had and used against any quaker or quakers, for the recovery of any tithes or rates, or any customary or other rights, dues or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister, or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place, other than such justice of the peace as is patron of any such church or chapel, or any ways interested in the said tithes, upon complaint of any parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapel-warden, or other person who ought to have, receive or collect any such tithes, rates, dues or payments, as aforesaid, are hereby authorized and required to summon in writing, under their hands and seals, by reasonable warnings, such quaker or quakers, against whom such complaint shall be made, and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein, as in the said act is limited or directed; and also to order such costs and charges, as they shall think reasonable, not exceeding ten shillings, as upon the merits of the cause shall appear just; which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter-sessions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the titles of such tithes, dues or payments shall be in question, in like manner as in and by the said act is limited and provided.—1 Geo. 1. st. 2. c. 6. § 2.

7. Order of the justices upon several quakers for payment of tithes, confirmed at sessions, established.—31 Geo. 2. B. R. *Rex v. Wakefield.* ii. 153

8. Upon all orders of this kind, the great

and material point must be, "whether the title to the tithes was really in question or not;" and ought to be determined before the *certiorari* issues.—S. C. ii. 153

9. The provisions of the 7 & 8 W. 3. c. 34. & 1 Geo. 1. stat. 2. c. 6. § 2. extended to any value not exceeding 50*l*.

10. One justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace.—53 Geo. 3. c. 127. § 6. iv. 259

11. The stat. 7 & 8 W. 3. by which a summary remedy is given for tithes under 10*l*., due from quakers, on complaint before two justices, does not take away the jurisdiction of the ecclesiastical court, and it is discretionary with the parson whether he will take the remedy provided by this statute, or proceed by libel in the spiritual court.—18 Geo. 3. B. R. *Manser v. Taylor*. iii. 1275

QUARRIES.—See DISCHARGE.

1. The commons complained that many had been troubled by citations for tithes of stones and slate opened and drawn out of quarries, whereof no tithes had ever been demanded or paid.—5 Hen. 4. iv. 17

2. Tithes are not due for quarries of slate or stone.—34 El. B. R. *Lyss v. Watts*. i. 106

3. No tithes are due *de jure* for quarries of limestone, coal, &c. and where they are paid it is by custom, as of lead ore in Derbyshire.—4 Car. C. B. *Stile's case*. i. 361

4. No tithes are due of quarries of stone, or of brick or clay.—15 Car. B. R. *Anon*. i. 399

QUEEN.—See KING.

QUEEN ANNE'S BOUNTY.

See AUGMENTATION.

RABBITS.—See EVIDENCE.

1. Tithes of rabbits by special grant.—33 Edw. 1. i. 6

2. Tithes shall be paid of rabbits.—15 Jac. B. R. *Jones and Gastril's case*. i. 295

3. Tithes shall not be paid of old rabbits in a warren. But *quære* whether tithes shall be paid of the young, as of pigeons.—22 Jac. B. R. *Haie's or Hawes's case*. i. 332

4. No tithe is due for rabbits killed for the use of the house. By the common law no tithes are due for rabbits, but only by the cus-

tom of the place.—2 Car. C. B. *Anon*. i. 357

5. No tithes are due of rabbits, but by custom, for nothing *feræ naturæ* is titheable by our law, as partridges or fish in a pond.—9 Car. B. R. *Anon*. i. 382

6. RICHARDSON, C. J. said, that prohibition had been granted upon debate to a suit for rabbits in Methold warren.—9 Car. B. R. *Daves v. Huddleston*. i. 382

7. No tithes are due for rabbits, but by custom.—15 Car. B. R. *Anon*. i. 399

8. S. P. 8 Car. B. R. *Warden v. Benet*.

13 Car. B. R. *Bruen v. Bradish*.

13 Car. B. R. *Vincent v. Tutt*.

14 Car. B. R. *Williams v. Wilcox*.

15 Car. B. R. *Dampport v. Onge*.

1 Ro. Abr. 635. c. 3.

9. The demand of tithes of conies is against common right.—13 Car. 2. Scacc. *Randal v. Head and others*. i. 434

10. Prohibition to a suit for tithes of rabbits without a special custom.—15 Car. 2. B. R. *Towerson v. Winget*. i. 440

11. No tithes are due for rabbits but by custom; and where in a suit in the spiritual court a special custom alleged for them in the libel is denied, a prohibition lies.—19 Car. 2. B. R. *Webb v. Newman*. i. 453

12. A prohibition was granted to a libel for tithes of rabbits in a warren (grounded on the common law and laudable custom, for 30 years past) upon suggestion of a denial of the custom, which the court said was not sufficiently applied to any parish; and by *Twisden*, where the libel is grounded on a custom, whereof the spiritual court has original consance, no prohibition will lie on denial of it; but *contra*, where it lies there only by virtue of the custom, as in libel for tithes of rabbits, pigeons, or fish, which was not denied by any.—21 Car. 2. B. R. *Philips v. Clever*. i. 479

13. Rabbits in an inclosed warren are not titheable without a custom.—4 Ann. Scacc. *Nicholas v. Elliott*. i. 698

14. Rabbits are titheable by custom.—25 Geo. 2. Canc. *Walton v. Tryon*. ii. 123

15. Tithes are payable by custom for rabbits bred and taken in warrens, and other places, stocked, planted, or depastured with rabbits, by the occupier, and sold by him.—14 Geo. 3. Scacc. *Ball v. Robinson*. ii. 289.

RAKINGS.—See DISCHARGE.

1. By the canon law the tithe of corn is to be paid by the tenth ridge, therefore a custom to pay the tenth shock in lieu of rakings and tithe of headlands is good.—29 El. C. B. *Anon*. i. 91

2. Where a custom was alleged, that the inhabitants had used to till and sow their lands, and had used to be discharged of their tithes of rakings, after the shocks were carried away; *Coke*, for the parson, dared not demur, but traversed the prescription.—30 El. B. R. *Perry v. Soam*. i. 96

3. The tenth sheaf is no satisfaction for more than the corn of which it is the tithe, and therefore not for the rakings.—31 El. C. B. *Bird v. Adams*. i. 97

4. A prescription to pay the tenth sheaf for tithes of all the corn in the sheaf, and of all which is raked, is void, for tithe is to be paid of both of them. It is also unreasonable, for then the less part may put into sheaves and the greater part left to be raked.—38 El. C. B. *Grysmen v. Lewes*. i. 112

5. Tithes shall not be paid for rakings, unless they be foul rakings.—38 El. B. R. *Sherington v. Fleetwood*. i. 132

6. Tithes shall not be paid of rakings, unless they be foul and covinous in order to defraud the parson.—41 El. B. R. *Johnson v. Aubrey*. i. 147

7. It was held a good custom to make the barley into cocks, and to pay the tenth cock in satisfaction of the tithes of the barley and the rakings *minus voluntariè* dispersed, for that they were not so ought to come on the other side.—41 El. B. R. *Green v. Hun*. i. 147

8. Prohibition to a suit for rakings. It was said afterwards that they were of great value. *Coke* said they might plead that for a consultation, if they chose—he did not like such greediness.—14 Jac. B. R. *Pitt v. Harris*. i. 256

9. If corn be scattered purposely, tithe of rakings shall be paid.—14 Jac. B. R. *Fosse v. Parker*. i. 260

10. Prohibition to a libel for rakings, but it ought to be suggested, that they were involuntarily scattered.—3 Car. B. R. *Cicill v. Scott*. i. 357

11. On libel for corn tithes fraudulently scattered, and plea that they were rakings involuntarily scattered, B. R. held, that whether voluntary or not, was no cause for prohibition, but appeal. If however in the spiritual court they agree them rakings, and involuntarily scattered, and yet adjudge payment, prohibition lies; but no issue can be on the intention of the judge, unless specially declared in the decree, and not suggested by the party only, that *prætextu* of tithes being due of rakings involuntarily scattered, it was so decreed. If it be suggested that the judge refused the plea, issue should be taken on that, for if the plea were accepted, the judge's opinion might be as well on the fraudulent scattering, as that tithes were due of rakings.—25 Car. 2. B. R. *Peters v. Prideux*. i. 500

12. No tithe is due for involuntary rakings not fraudulent.—9 W. 3. Scacc. *Anon*. i. 625

13. Tithe is due of rakings of corn never gathered into sheaves; but if it had been so gathered and no fraud, none is due.—10 W. 3. B. R. *Anon*. i. 632

RANKNESS.

See *MODUS*, *bad*, for *Rankness*—M. Farm.

RAPE SEED.—See *TITHES*, *small*.

RATE TITHES.

1. It is difficult to say what is meant by rate tithes.—6 Geo. 4. Canc. *Williams v. Bacon*. iii. 1178

RECTORY.—See *PARSON AND VICAR*—*TITHES*, *how pass*.

1. Properly the tithes and offerings make the parsonage, yet if there be any glebe it shall pass by lease under the general name of parsonage.—8 H. 7. i. 49

2. The court held, that the church, the churchyard, and the tithes make the rectory, and that the whole would pass by parol under the name of rectory; but they were of opinion that the parson could not lease the tithes only without deed. *Quære*, if the parsonage house, the glebe, and offerings would not pass by a demise of the rectory only, without other words.—21 Hen. 7. i. 50

3. A portion is a thing in gross by itself, and cannot pass by that which is intended *nomen collectivum*, as a rectory is.—27 El. B. R. *Futter v. Borome*. i. 86

4. A manor and a rectory are *nomina collectiva*, which have their natural parts; but it is otherwise with a chapel. The king expresses his intent by the particulars of his grant, and confirms it by naming the parts.—17 Jac. B. R. *Grubham v. Grate*. i. 313

5. If a rectory be let, excepting the glebe, the exception is void, for no rectory may be without glebe.—19 Jac. C. B. *Mabie's case*. i. 325

6. A rectory may be without glebe, for the glebe is only an addition, as the common law gave him tithes only; besides it may have been conveyed away to the vicar.

7. A grant of a rectory without deed, is good; for

it shall be intended that it had glebe land.—5 Car. B. R. *Edgar v. Sorrel*. i. 369

8. A rectory is the church parochial, whereof the incumbent takes cure and seisin by his induction after institution, which is his charge, and without other seisin than of the ring or key of the church door; by the induction into the rectory the parson is seised of all the possessions belonging to the rectory of what kind soever.—

20 Car. 2. B. R. *Holden v. Smallbrooke*: i. 459

9. A rectory is included in the word tenement.—4 Geo. C. B. *Powell v. Bull*. i. 738

10. Where evidence was given, that the plaintiff and his predecessors had for many years solemnized marriages, and baptisms, and performed divine service, *quod* rector, in a room, part of a mansion house, fitted up as a chapel: this being accompanied by documentary evidence, was held sufficient to establish that it was an ecclesiastical rectory, and that the plaintiff as rector was entitled to the tithes of the parish; notwithstanding it was proved, that the plaintiff or his predecessors had never received tithes; and that the defendant, the patron, and his ancestors had always been in the perception of them; the court, however, being of opinion, by reference to the ancient value of the rectory, as proved by the old surveys and other documents (from which the value appeared to be much larger than the contemporary valuation of the property claimed by the defendant) that the defendant was a portionist of a part of the tithes; but of what part in particular, or what was the nature or extent of the rights and claims of the parties, the court was unable to judge from the evidence; and, therefore, referred it to the master to make the proper inquiries, and refused a commission for that purpose, though applied for by the plaintiff.—59 Geo. 3. Scacc. *Boulton v. Richards*. iii. 949

RENT.—See LEASE.—TITHES, *what*.

1. A prohibition granted against a parson who sued for tithes of rent.—1223. *Anon*. i. 1

2. Whether rent may be reserved out of any incorporeal hereditaments.—23 Car. 2. B. R. *The Dean and Chapter of Windsor v. Gover*. i. 487

RESIDENCE.—See NON-RESIDENCE.

REVIEW, BILL OF.—See TITHES, *Chancery*.

ROAD.—See TITHES, *how to be paid*.

SALT.

1. By custom tithes shall be paid of white salt, but a prohibition granted upon a *modus*.—16 Jac. B. R. *Jones v. Gower*. 1 Ro. Abr. 642.

SCIRE FACIAS.

1. Writs of *scire facias* to answer concerning tithes in chancery, not to be granted, saving the king's right.—18 Edw. 3. stat. 3. c. 5. i. 9

2. Where upon a *scire facias* a man pleads to the inquisition in chancery, the whole process is sent into the king's bench, as is meet where a man pleads to the country in chancery.—22 Edw. 3. i. 17

3. Form of writ of *scire facias quare consultation non*.—17 El. *Soby v. Molins*. i. 65

4. Prohibition on suggestion that the lands of which tithe wood was demanded, were holden of the queen *in capite*; *scire facias* to shew cause why a consultation should not be granted.—21 El. Canc. *Merrick v. Wolfe*. iii. 1197

5. The ancient course in a prohibition was to grant a *scire facias*; afterwards the court bound the parties in a recognizance to prosecute an attachment of contempt for suing in the spiritual court after prohibition granted, and then to declare upon the prohibition, so that he who was defendant in that court became plaintiff in the court above.—2 Ann. B. R. *Anon*. i. 653

SEEDS.—See GRAIN—TITHES, *small*.

1. A custom to pay the tenth bushel of rape-seed ready dressed for tithe, the parson allowing one penny for dressing, established; and tithes of coleseed, mustard seed, and turnip seed decreed to be paid in the same manner.—7 W. 3. Scacc. *Swaine v. Pern*. i. 607

2. By common law as long as the distinction has been made between great and small tithes, which is as long as appropriations to religious houses, who usually engrossed the great, but left the small tithes to the curate, all seeds have been reckoned as small tithes.

The common law seems to follow the canon law in this point.—12 Geo. 2. Scacc. *Wallis v. Pain*. ii. 67

3. The exchequer have determined the tithe

of clover seeds to be a small tithe. The reason the exchequer made the difference between seed and the other cases, was not grounded on reasoning, but on authority. It was because LORD COKE laid it down that seeds were *minutæ decimæ*, and the court of exchequer did rightly in conforming with that rule, as it was established; and therefore that case of seeds is to be considered as an exception to the general rule, and does not vary the rule itself. But this exception has never been carried further than to seeds, not grain.—33 Geo. 2. Canc. *Sims v. Bennett.* ii. 172

4. The tithes of clover seed, saintfoin seed, and rye grass seed, are small tithes.—6 Geo. 3. Scacc. *Clarke v. Stapler.* ii. 212

5. The tithes of clover seed and rye grass seed are small tithes.—7 Geo. 3. Scacc. *Cartwright v. Bailey.* ii. 221

SEQUESTRATION.—See DISCHARGE.

SEQUESTRATOR.

See TITHES, to whom payable.

SESSIONS.—See TITHES, small.—QUAKERS.

SETTING OUT TITHES.

See SEVERANCE—TITHES, how to be paid.—CASE, action on the.

1. It was agreed that in trespass for taking corn where the defendant justified as for his tithes taken, he should allege that he was parson at the time of the severance, as well as of the taking.—35 Hen. 6. i. 38

2. Of common right every person may enter to gather his tithes, and to turn them till they are dry, and reasonable time for that purpose shall be tried.—12 Edw. 4. 6. i. 46

3. The severance of the tithes must be by the owner, for if a stranger sever them, the parson cannot take them.—12 Edw. 4. 12. i. 46

4. If the tenth part of corn be severed for tithes, the parson shall have an action of trespass, before any seizure, against him that takes it away, for the property and possession was in him before seizure, because the thing is certain by the severance of the tenth part.—7 El. C. P. *Graysbrook v. Fox.* i. 47

5. When tithes have been set out by a parishioner, the law says they are in the possession of the parson, and if a stranger take them away, he does it wrongfully, and no action of account will lie against him, for there is no privity, but

an ejectment.—14 & 15 El. *Tottenham v. Beddingfield.* i. 59

6. An information for an intrusion will not lie where the tithes (leased by the queen) have not been severed from the nine parts; but if after such severance a stranger take them, the queen may have intrusion, and the party trespass.—26 El. Exch. *Anon.* i. 85

7. A. libelled for tithes; B. for a prohibition shewed, that all the claim A. had to the tithes was by grant without deed; and at first the court were inclined to grant it, for without deed nothing passed, and A. had no right to claim the tithes of B. but afterwards they held that whether A. had right or had not, B. of common right ought to pay his tithes and to sever them from the nine parts, and whosoever takes them, rightfully or not, B. is discharged; but they held that B. might prescribe in *modo decimandi* without making mention of any severance, or might surmise that the tithes belonged to I. S. with whom he had compounded to pay such a sum for all tithes. A consultation was awarded.—26 El. B. R. *Withy v. Saunders.* i. 85

8. The owner of the land set out his tithes, and a stranger carried them away; it was held that no prohibition would lie to the spiritual court to stay a suit for them, for that the same matter might be pleaded in bar there.—26 El. B. R. *Gerrard's case.* i. 86

9. Where a custom was alleged that the parson was to have every tenth land for the tithe of corn, and the parishioners knowing before-hand which would be the parson's, did not cultivate it properly: held, that as the fraud was remediable by an action on the case at common law, prohibition should go to a suit for tithes in kind of the corn.—30 El. B. R. *Stebbs v. Goddlock.* i. 93

10. If the parishioner set out his tithes, and the parson will not take them, or they be destroyed by cattle by his laches, he shall not have tithes again, and if the spiritual court will not allow the plea, the party shall have a prohibition. But if the parishioner set forth his tithes and take them again, he may be sued for tithes in the spiritual court, and such setting forth shall not excuse him.—30 El. B. R. *Bennet v. Shortwright.* i. 94

11. If a man set out his tithes and a stranger take them, the parson has his remedy at common law by trespass or detinue, and not in the spiritual court; but if, after setting them out, the owner detain or carry them away, the parson has his remedy either there or at common law; though, according to *Croke*, the court was divided as to the remedy in the spiritual court.—40 El. B. R. *Leigh v. Wood.* i. 139

12. Tithes had been compounded for, but yet they were set out, the parson takes them; and the parishioner retakes them; prohibition lies

to a suit in the spiritual court.—41 El. B. R. *Brook's case.* i. 148

13. Though the tithes have been in fact set out, yet if the parishioner refuse to let the parson come for them (by locking a gate) the parson may sue for them in the spiritual court, by the statute 2 Edw. 6.—43 El. C. B. *Blackwell's case.* i. 154

14. Though prædial tithes have in fact been set out, yet if afterwards they be carried away by the occupier, such setting out is fraudulent within the statute 2 Edw. 6.—44 El. B. R. *Heal v. Sprat.* i. 155

15. The owner of corn before severance secretly sold it to one not known, and then as servant to the vendee reaped the corn, and carried it away without setting out the tithes; pretending that neither the vendee, because he did not carry away the corn, nor the vendor because he had no property in it, for he did not carry his corn or his tithes, should be with 2 Edw. 6. but resolved that the vendor should pay the treble value, for he carried them away in *fraudem legis*.—S. C. *ib.*

16. If one set out his corn and after take it away, he may be sued in the spiritual court, or by action of trespass; but if the parson sue a stranger in the spiritual court for taking away tithes set out, he incurs a *præmunire*.—6 Jac. *Anon.* i. 174

17. Where a parson has made a collector of tithes, such collector cannot license one to carry away his corn, without setting out his tithes.—7 Jac. B. R. *Brickendine v. Denwood.* i. 191

18. One set out his tithes, but would not suffer the parson to come and take them away; to a libel in the spiritual court he pleaded, that he only hindered the parson from coming one way (which was the usual way); a prohibition was granted upon suggestion that there was no question about the payment of tithes, but of the way to come for them; afterwards a consultation was granted by the whole court.—8 Jac. B. R. *Anon.* i. 191

19. The parishioner sets forth the tithes fraudulently, and presently takes them away again, as it appears upon the evidence. In an action, upon 2 Edw. 6. for the treble damages, it was resolved, that debt lies for treble damages, upon such a fraudulent setting forth of tithes, although the clause of treble damages speak nothing of fraud.—8 Jac. C. B. *Ford v. Ponnoy.* i. 198

20. If a man buy standing corn of a man who afterwards and before severance becomes parson, yet upon severance tithes shall be set out.—10 Jac. B. R. *Moyle v. Ewer.* i. 204

21. A tenant cuts corn, and before carriage his term expires, yet he must set out his tithes, for he remained owner of the corn, &c. and if corn be cut down, although a stranger take it

away before severance from the nine parts, an action on 2 E. 6. lies; for otherwise the intent of the statute might easily be defeated.—11 Jac. B. R. *Kipping v. Swayn.* i. 219

22. After tithes have been set out, no suit lies for them in the spiritual court, for by the setting out, they have become a lay chattel; if the question be whether set out or not, prohibition lies.—12 Jac. B. R. *Reynolds v. Hayes.* i. 233

23. It was said by Hutton, that by the civil law the parishioner ought to give notice to the parson when the tithes are set forth. But it was adjudged, that the common law does not so oblige a man.—15 Jac. *Spencer's case.* i. 261

24. Although the parishioner ought, *de jure*, to reap the corn, yet he is not bound to guard the tithes of the parson, &c. and if the parson do not carry them away in convenient time, an action on the case lies against him.—15 Jac. C. B. *Dr. Brigman's case.* i. 289

25. If corn be severed from the nine parts, and set out for tithe: held that if the land be discharged by 31 H. 8. by such severance and setting out, no property is in the parson, but the owner may take it, and the parson may bring trespass, if the tithe of right belong to him: yet such setting out is covinous and does not excuse from treble damages by 2 Ed. 6.—17 Jac. *Pangborne v. Sir John Davies.* i. 304

26. If a man set out his tithe hay or corn, and the parson refuse to take it away, an action on the case lies.—21 Jac. B. R. *Wiseman v. Denham.* i. 328

27. Tithes, after they are set out, are lay chattels; and if a stranger carry them away, action lies in the temporal courts, and not in the spiritual court.

28. If a stranger take emblements before severance of tithes, the parson may sue him for the tithes in the spiritual court.—21 Jac. B. R. *Gwyn v. Merryweather.* iii. 1211

29. Tithe was set out, and afterwards the owner of the land took it damage feasant: in pleading he did not shew how long it remained on the land; and held bad, as it did not appear that he had been injured, as he had not shewn how long it remained.

30. If the tithe be set out, and the parson do not remove it in due time, the usual course is for the party to bring his action on the case.

31. After the tithes are set out, the parson may have his action of trespass, if any one take them; but if a mere stranger set out tithes, that does not settle any property in the parson, so as to enable him to bring his action.—1 Car. B. R. *Stilman v. Chanor.* i. 351

32. If one who has some colour of title, come and sow the land, and set out the tithes, though he be a disseisor, this is good for the

parson; otherwise it is, where one without any colour sets out tithes, which is no setting out in law.

33. If the corn continue over long after it is set out, the farmer has a remedy by action on the case; or he may justify in trespass for taking away the tithes damage feasant; but then he ought to shew specially that the same remained there so long, that by reason of it there was a damage to him.

34. When tithes are set out, the parson has liberty for a time convenient to come and carry them away, which conveniency of time is triable by a jury.—1 Car. B. R. *Mountford v. Sidley*. i. 351

35. The parishioner of common right ought to make the corn into sheaves.—13 Jac. B. R. 1 Ro. Abr. 644.

36. Where a parson libelled for tithe in shocks, and a prohibition had been granted upon a suggestion of a custom to set it out in sheaves: consultation was denied.—2 Car. B. R. *Steward's case*. i. 353

37. If two persons be entitled to the tithes of a parish in moieties, the parishioner is not bound to set them out in halves, but the tithe owners must divide them.—2 Car. B. R. *Stilman v. Cremer*. i. 354

38. A modus may be sued for in the spiritual court. So if tithe be not set out in cocks, where by custom it ought; but in such cases the suit must be special for not setting out in cocks, and not general for not setting out.—2 Car. B. R. *Langton's case*. i. 355

39. A custom, that in consideration of binding up the corn in sheaves, and setting them up in shocks, and then setting out the tenth shock for tithe, the parishioner should be discharged of the odd sheaves which would not make a shock, is good, for the parishioner does more than of common right he is bound to do.—3 Car. B. R. *Anon.* i. 360

40. By the custom of England, tithe corn shall be set out in the sheaf, and if it be by the tenth stitch or stook, it is by custom, and may be laid in discharge of other tithes, as rakings, &c.—18 Car. 2. B. R. *Ledgar v. Langley*. i. 448

41. An issue directed to try whether corn in the ancient inclosures ought to be set out in sheaf or in stack found to be in sheaf, and decreed accordingly.—4 Jac. 2. Scacc. *Simpson v. Hill*. i. 555

42. *Quære*, whether hay may be set out in cocks from the swarth, without tedding.—5 W. & M. Scacc. *Nash v. Pocock*. i. 581

43. A parson may come for tithes set out, with a cart almost loaded with tithes of other persons.—S. C. *ib.*

44. The vendee of toppings and loppings of oak, ash and elm, bought standing, is liable to pay tithes, if any be due, which is only by

custom.—6 W. 3. Scacc. *Taswell v. Athill*. i. 590

45. The parishioner cannot put in his cattle and eat the corn tithes, if the parson do not carry them away.—8 W. 3. C. B. *Shapcott v. Mugford*. i. 618

46. Holt, Ch. J. thought the turning of cattle to the tithe, made it a fraudulent severance, and that a suit might be maintained for it in the spiritual court.—8 W. 3. B. R. *Gale v. Ewer*. i. 621

47. Tithes ought to be paid as soon as the tenth part can be severed from the nine, and for corn and hay as soon as it is made into shocks or cocks.—9 W. 3. Scacc. *Anon.* i. 625

48. The parson cannot justify coming to set out tithes without the consent of the owner.—S. C. *ib.*

49. A custom to set out the tithe of corn in sticks of twelve sheaves, or stitches of ten sheaves, and to pay no tithes for the odd number of sheaves under ten, is void.—12 W. 3. Scacc. *Trewin v. Bond*. i. 639

50. Where tithe of wool and lamb were taken by the parson's man, who said that he took them in part, but that they were not his master's full due, and that his master would sue; the court decreed that the wool and lamb should go in part only, and not like corn tithed unequally and the tithe taken, where the parson is bound and cannot take only in part. (*Quære, diversitatem Dodd.*)—6 Ann. Scacc. *Pemberton v. Beckwith*. i. 682

51. A custom to set out corn by the shock and not by the sheaf, and to give notice to the parson, decreed.—6 Ann. Scacc. *Pern v. Fountain*. i. 686

52. The loose corn at the bottom of the tithe cocks belongs to the parson.—2 Geo. Scacc. *Dobson v. Norton*. i. 725

53. Where a general customary manner of tithing in a parish is alleged, the defendant cannot be let in to prove a particular manner.

54. A custom to throw nine sheaves into a cart, and to leave the tenth for the parson, was thought by the court to be bad, and that the whole ten ought first to be set out before the nine are thrown into the cart.—11 Geo. Scacc. *Boughton v. Wright*. i. 803

55. Wheat is titheable in the sheaf, and not in the shock.—16 Geo. 2. Scacc. *Lamb v. Tattersall*. ii. 91

56. Corn cannot legally be removed from the field where it is produced, before it is tithed. 20 Geo. 2. Scacc. *Thomas v. Rees*. iii. 1240

57. Held, that all the wheat growing in the field must be cut down before the tithe of any part thereof be set out.—6 Geo. 3. Scacc. *Mather v. Holmwood*. ii. 212

58. Though, generally speaking, the tithe of corn ought not to be set out until the whole field be reaped, yet, where the field is sown

with the same or different sorts of corn or grain, ripe at different times; or the weather is catching, the tithe of a part may be set out, and the particular quantity which may be so set out, must depend on circumstances; but generally speaking, it must be a reasonable quantity, as a load.

59. Corn is regularly titheable in the sheaf.

60. Barley and oats (soft corn) are titheable in the cocks, and not in the swarth, and they ought to be cocked before tithed.—10 Geo. 3. Scacc. *Erskine v. Ruffle*. ii. 235

61. A custom of tithing by throwing aside every tenth sheaf, as the corn is about to be carried, is bad.

62. Tithes must be set so that the rector may compare them with the other parts.—36 Geo. 3. Scacc. *Tennant v. Stubbing*. ii. 425

63. Setting out of tithes cannot be dispensed with, even although the uncertainty of the weather prevents the corn from being put in shocks at all.—36 Geo. 3. Scacc. *Franklin v. Gooch*. ii. 426

64. A farmer may cut down a field in any portions most convenient, provided he sets out the tithe of all then cut down, before any is carried, and provided it be not done vexatiously.—37 Geo. 3. Scacc. *Hall v. Machet*. ii. 464

65. A custom to tithe barley and oats by making them into small cocks, called wads, from the swathe, without raking, and to set out every tenth wad, is bad.—38 Geo. 3. Scacc. *Howard v. Bovingdon*. iii. 1377

66. There is no definite mode of tithing pease; but, on principle, the tithe ought to be set out as soon as the crop comes into proper parcels, so that the tithe may be clearly ascertained.—38 Geo. 3. Scacc. *Mantell v. Paine*. iii. 1380

67. Though the proprietor of tithes leave them on the land more than a reasonable time after they are set out, and after he has notice thereof, the owner of the land cannot justify, in trespass, turning in his cattle upon the land to depasture it in the usual course of husbandry, whereby the cattle consumed the tithes; but his remedy is either by distress or by action. 39 Geo. 3. B. R. *Williams v. Ladner*. ii. 476

68. An action on the case will not lie against the parson for not taking away his tithes, unless they have been properly set out. It is therefore not maintainable for not taking away tithe of hay, where it was set out in the swathe. 39 Geo. 3. N. Pr. *Moyes v. Willet*. ii. 479

69. The common law mode of tithing wheat is in the sheaf, and not in the shock.

70. The parishioner must in all cases leave his nine parts in the field a reasonable time for the parson to compare his tithe with them.

71. *Semble* that if the parishioner reaps one land, and in coming back along the same land

to reap the next, throws out the tithes of the first, and shocks his nine sheaves, he does not give a sufficient time to the parson to compare.

72. If the parishioner puts up his sheaves into shocks before the parson has had time to compare the tithe-sheaf with the other nine, *semble* that the parson has a right to take down the shock to examine the nine sheaves. Per *Chambre, J.*—49 Geo. 3. C. B. *Hallwell v. Trappes*. ii. 572

73. Though by the general rule a farmer may not at his pleasure tithe and carry part of a field of corn which has been cut, before the whole be tithed, and then proceed to another field, &c. so as to oblige the parson to come again to the same field at another time to take his tithe; which general rule, however, being levelled against fraud, vexation and caprice, must, where these have no application, be understood with all necessary exceptions of partial ripeness and weather, the neglect of which would be prejudicial to the crop; yet there is no rule of law which obliges a farmer (all fraud and vexation apart) to tithe the whole of that part of a field which lies in one parish before he proceeds to tithe any part of the same field lying in another parish. And, therefore, where a farmer cut the whole of a field of barley lying in the two parishes of A. and B., and after rolling (*i. e.* cocking) and tithing part in A., proceeded to roll and tithe part in B., and the weather being catching, he carried that part which was tithed in A. the day before the rest of the field in A. was rolled and tithed; and this without previous notice of the intention to carry such part: held that this being done *bond fide*, was lawful.—50 Geo. 3. B. R. *Leathes v. Levinson*. ii. 579

74. Corn being titheable of common right in the sheaf, it is not competent for the farmer, without a custom, after a general notice to the parson that he should begin to reap on a certain day, or as soon after as the weather would permit; but before tithing, to put all the sheaves when bound immediately into large shocks or riders, consisting of 8 sheaves set up on their ends against each other, with two covering sheaves placed roof-wise on the top, for the purpose of protecting the whole against bad weather; from which shocks the 10th sheaves were afterwards drawn, without taking the rest of the shock to pieces; and the rest of the wheat shocks were removed from the ground in two hours, and the oat shocks in half an hour afterwards: for the parson has thereby no reasonable opportunity of comparing the 10th with the other 9 sheaves, as he is entitled to have: but the corn ought to be tithed in the sheaf before it is made up into shocks or riders.—51 Geo. 3. B. R. *Shallcross v. Jowle*. ii. 607

75. In an action on the stat. 2 & 3 Ed. 6.
G G 2

c. 13. for not setting out the tithe of wheat, barley, oats, peas, and vetches, the jury found a custom throughout the parish for the parson to take the eleventh shock of wheat and the eleventh cock of barley, &c. Held, that there was a sufficient consideration for the custom as to the wheat, it appearing that the farmer had always been used to put the sheaves into shocks, and in case of bad weather to open them to dry, and therefore the custom was good; but as to the barley, &c. there was no sufficient consideration, it appearing that the farmer only put them into cocks, without doing any thing farther, except that in case of wet weather, before the parson tithed them, he opened the cocks of barley and oats, and put them up again, which was in fact for his own benefit: the custom therefore as to the barley, oats, peas, and vetches, was held void.—53 Geo. 3. B. R. *Smyth v. Sambrook*. ii. 661

76. A custom that the farmer shall hattock his wheat, and that in consideration of his doing so, he shall pay the eleventh part or shock or hattock, is good, though laid in the alternative.

77. A custom that barley and oats shall, if so hattocked, pay the eleventh part or shock, or hattock, for the tithe; or, if only set out in cocks, (the common mode) the tenth part, &c. is good, notwithstanding its apparent uncertainty, duplicity, or want of mutuality.

78. The value of the additional labour bestowed on the corn need not be precisely equal to the value of the portion of the tithe deducted, to support such a custom; all that is required being a consideration, however less it may be than a full equivalent.—57 Geo 3. Scacc. *Cokburne v. Hughes*. iii. 783

79. *Semble* that a custom to render one in ten of parcels of corn set up together in the quantity of ten sheaves to each, called kivers, or riders, in lieu of corn and hay produced in the same year, is not a good custom.—1 Geo. 4. Scacc. *Legh v. Glegg*. iii. 1000

80. Declaration in case for not carrying away the tithe of corn, alleging it to have been "lawfully and in due manner" set out, is sustained by proof, that the tithe was set out according to an agreement between the parties, though not according to the mode prescribed by the common law. Whether the crop has been left on the ground a reasonable time after the tithe has been set out, for the tithe owner to compare his tenth part with the residue, is a question of fact for the jury, and not of law for the judge.—5 Geo. 4. B. R. *Facey v. Hurdom*. iii. 1172

SHEEP—See AGISTMENT—WOOL.

1. Sheep (*ovis*) is a doubtful word and extends to wethers as well as ewes.—3 El. B. R. *Anon*. i. 113

2. Sheep fed in stubble fields for the sole purpose of manuring the land are not titheable.—28 Car. 2. C. B. *Anon*. i. 509

3. A custom to pay tithes for all sheep on the ground on a particular day, in lieu of tithe for all that should be there after in that year, held unreasonable.—28 Car. 2. C. B. *Moor v. Field*. i. 511

4. A custom that on the 1st of January in each year the number of sheep is to be computed, and if there be so many sheep at shearing time, full tithe should be paid of those shorn; and if the number should be smaller or greater than on New Year's day, then a half-penny for each sheep over or under the number, held to be good.—4 Jac. 2. Scacc. *Washburne v. Nunnelly*. i. 557

5. The year for sheep ends at shear-day.

6. A pasturage tithe is due for sheep kept after shear-day, and sold out of the parish.

7. Full tithe of wool decreed, though the sheep had been kept but two months in the parish where sheared.—2 W. & M. Cam. Scacc. *Dummer v. Wingfield*. i. 566

8. Tithe wool of lambs shall be paid, and tithe for agistment of yearlings.—8 Geo. Scacc. *Baker v. Sweet*. i. 776

9. Where sheep were removed when they were ready to drop their lambs to another parish for convenience of forage, as insisted upon by the defendant, the court of exchequer would not send it to an issue to try whether fraud or not, but dismissed the bill.—10 Geo. Scacc. *Boys v. Ellis*. i. 793

10. It is fraudulent, in the contemplation of a court of equity, to remove sheep fed in one parish to another place, shortly before the shearing and lambing seasons, and then to drive them back again without accounting for the tithes in the parish where they were depastured.—59 Geo. 3. Scacc. *Hall v. Maltby*. iii. 928

SHOCK.—See TITHES, How to be paid—RAKINGS.

SILVA CÆDUA.—See WOOD.

1. A prohibition shall be granted where a suit is commenced in the spiritual court for *silva cædua*.—45 Edw. 3. c. 3. iv. 9

2. By BELKNAP, *silva cædua* means every kind of wood which will bear to be cut, and will grow again; in a prohibition therefore to a suit for great trees, it is not sufficient

SEVERANCE.—See SETTING OUT TITHES.

to say that he did not hold plea of any thing but *silva cædua*, for by this word priests demand tithes as well of great as smaller trees, and it was never seen that tithes were paid of great trees or timber; therefore the traverse must be, that he did not hold plea of great trees, and to this the court agreed.

3. In an attachment on a prohibition, it was doubted whether the spiritual judge should take judicial notice of what kind of wood tithe was claimed, where it was stated in the libel to be *silva cædua*, unless it was surmised that proof was offered that it was demanded of great trees, and the proof refused.—50 Edw. 3. i. 26

4. In an attachment on a prohibition an issue was tendered that the wood for which tithes were claimed in the spiritual court were great trees, fit for building a house for the habitation of any one, according to the custom of the country.—11 Hen. 4. i. 28

SIMONY.

1. The simoniacal promotion of one person shall not prejudice another.—1 W. & M. c. 16. iv. 187

2. An act to prevent any ecclesiastical persons from buying the next avoidance of any church preferment.—12 Ann. stat. 2. c. 12. iv. 205

SINECURE.—See INSTITUTION.

SMALL TITHES.—See TITHES SMALL.

SPIRITUAL COURT.—See PARSON & VICAR —PROHIBITION, *Where it lies*—SETTING OUT TITHES.—ACTION ON THE CASE.

1. The spiritual court had no jurisdiction of lay fees; it held pleas of tithes of hay, mills, and pannage.—9 & 10 Hen. 3. i. 2

2. A parson may sue in court-christian for money due for tithes sold.—31 Hen. 3. i. 3

3. S. P.—55 Hen. 3. ib.

4. Where from a deed of composition it appeared that the question related to tithes, the court of C. P. held that it must be settled in the spiritual court.—38 Edw. 3. i. 18

5. Although the defendant in a suit admit the jurisdiction of the temporal court, such admission will not empower that court to take cognisance of a thing which belongs to the spiritual court.—20 Hen. 6. i. 34

6. The spiritual court shall be ousted of jurisdiction as soon as the right of advowson

comes in debate, although it did not appear at first.—38 Hen. 6. i. 42

7. At the time the libel is grantable by law it shall be granted by the spiritual court and delivered to the party cited without difficulty.—2 Hen. 5. c. 3. iv. 19

8. No person shall be cited out of the diocese where he dwells, but in certain cases.—23 Hen. 8. c. 9. iv. 22

9. All causes determinable by any spiritual jurisdiction shall be adjudged within the King's authority.—24 Hen. 8. c. 12. iv. 24

10. Remedy shall be had for tithes and offerings in the spiritual courts, and not in the temporal.—32 Hen. 8. c. 7. § 8. iv. 52

11. If any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth; or willingly withdraw his tithes of the same, or of such other things whereof predial tithes ought to be paid; or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take and carry away their tithes as is abovesaid; by reason whereof the said tithe or tenth is lost, impaired or hurt, that then upon due proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges and expenses of the suit in the same: the same to be recovered before the ecclesiastical judge, according to the King's ecclesiastical law.—2 & 3 Edw. 6. c. 13. § 2. iv. 86

12. If any person refuse to pay his personal tithes, then it shall be lawful to the ordinary of the same diocese where the party that so ought to pay the said tithes is dwelling, to call the party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the party's own corporal oath, concerning the true payment of the said personal tithes. — § 9. iv. 87

13. Suits for withholding tithes shall be in the ecclesiastical courts only, and if the party condemned refuse to obey the sentence, he shall be excommunicated. — § 13. iv. 88

14. This act, or any thing therein contained, shall not extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter, cause or thing, being contrary or repugnant to or against the effect, intent or meaning of the statute of Westminster second, the fifth chapter, the statutes of *articuli cleri*, *circumspectè agatis*, *silva cædua*, the treatise *de regia prohibitionè*, nor against the statute of *anno primo Edwardi tertii*, the tenth chapter, or any of them, nor yet hold plea in any matter whereof the King's court of right ought to have

jurisdiction; any thing therein contained to the contrary in anywise notwithstanding.—2 & 3 Edw. 6. c. 13. § 15. iv. 89

15. A vicar was endowed with four quarters of wheat out of the tithe corn of the rectory; the tithe corn was leased, and the lessee covenanted to pay the corn to the vicar; it was held, that a prohibition would not lie to the spiritual court to stay a suit against the lessee, for the libel was not grounded upon the temporal covenant only, but on the endowment of the vicarage and the lease. It appearing from the libel that the parson or farmer of the rectory ought to pay the corn to the vicar; held, that the libel ought to have been against the farmer of the tithe corn and the owner of the rest of the rectory, jointly.—25 & 26 El. C. P. *Sutton v. Dowse.* i. 83

16. Where to have a prohibition to a libel it was suggested that 4*d.* an acre had always been paid to the vicar in lieu of tithe-hay, it was held that it ought not to be granted, for the modus would not come in question, and it ought to have been pleaded in the spiritual court, that the tithe belonged to the vicar and not to the parson, and if the vicar afterwards sued for tithe of the hay, then the modus would come in question.—30 El. C. B. *Botham & Cooper v. Lady Gresham.* i. 94

17. Where a parson libels again upon a claim with respect to which a prohibition has been granted, an attachment shall issue.—30 El. C. B. *Stafford's case.* i. 95

18. An agreement betwixt the parson and any of his parishioners is a good cause to grant a prohibition, if he libel in the spiritual court against such agreement, because the spiritual court cannot try it, and they will not allow such plea.—31 El. B. R. *Gomersal v. Bishop.* i. 97

19. The parson of S. sued a parishioner for tithes of certain land in the spiritual court; the parson of H. came in *pro interesse suo*, and for a prohibition surmised that there was a custom in the parish of S. that the parson of H. should have thirteen cheeses for the tithes of the land in S. and in recompense thereof the parson of S. had thirteen cheeses for the tithes of certain lands in H. The court thought a consultation should be granted, for though the parishioner might well plead the modus, yet between the parsons, the very right to tithes was in question, and not the bounds of the parish, and so triable in the spiritual court.

20. Where the right to a portion of tithes is in dispute between two parsons, and not the boundaries of a parish, prohibition does not lie.—34 El. C. B. *Dullingham v. Kyfeley*, or the parson of *Facknam's case.* i. 105

21. The allegation of a refusal of a plea by the spiritual court is not traversable, and is, of course, rather than of effect and substance; for

our judges well know, that in case of discharge of tithes, or *modus decimandi*, the ecclesiastical judges will not allow such allegation.—38 El. B. R. *Wright v. Wright*, or the Bishop of *Winchester's case.* i. 119

22. Where the spiritual courts have jurisdiction of the principal matter, they may try a plea incidentally which is triable at common law, if they will allow it.—40 El. C. B. *Somerset v. Markham.* i. 139

23. Prohibition does not lie upon a plea of simony, on 31 El. whereby the church was void, and the tithes not belonging to him; for it might more aptly be tried in the spiritual court.—40 El. B. R. *Riesby v. Wentworth.* i. 141

24. No consultation shall be granted where a modus appears, though not precisely the same as that suggested; and it was said that the practice of C. B. was in such case to grant a consultation to sue for tithes in such kind as proved.—43 El. B. R. *Beal v. Web.* i. 153

25. A suggestion that the defendant in the spiritual court had but one witness there to prove a deed, is not a sufficient ground for a prohibition, for where the spiritual court has jurisdiction of the principal matter, they shall determine the accessory; but if a question of common law arise upon the construction of a statute, or the like, and the spiritual court will judge of it, against the rule of the law, there, upon special surmise, and proof to the court that such surmise is true, prohibition lies.

26. The judges of the spiritual court cannot write to the judges of the common-law courts to certify, as these judges do to the spiritual court, by authority of the king's writ, where issue is taken upon any matter triable by the ecclesiastical law, as bastardy, ability of a clerk, &c.—8 Jac. C. B. *Roberts's case.* i. 193

27. The spiritual court cannot determine upon contracts, or the validity of assignments of leases.—9 Jac. B. R. *Vaughan's case.* i. 199

28. If one be a patentee of the King of a rectory, he may well sue for tithes in the spiritual court. But if they will go about to try, and determine the validity of the grant (*viz.*) of the King's letters patent, as whether *dominus Rex concessit*, or *non concessit*, they having no power so to do, in such a case they shall be prohibited.—10 Jac. B. R. *Anon.* i. 204

29. A parson libelled for the tithes of land of one, who shewed title to two thirds in another to whom he had paid those two parts; held that the parson must libel *de novo* for the other third part.—13 Jac. C. B. *Hoskins's case.* i. 247

30. A parson libelled for tithes of several things, a prohibition was obtained as to all but one, sentence was given before it was delivered, if costs had been at that time taxed for the whole, they must have been apportioned; but

if they had proceeded to taxation afterwards, and under colour of the fact, set as much as they would have done for the whole, they would have been safe, for it is matter within their own jurisdiction.—14 Jac. C. B. *Thompson v. Comfort*. i. 258

31. Where a parson libelled for tithes in the spiritual court, and a portionist came in *pro interesse suo*, held that no prohibition laid, as tithes were admitted to be due, and the spiritual court were competent to determine to whom; but if the grant by the letters patent had been in dispute, the common law should try it.—14 Jac. *Anon*. i. 259

32. One obtained a prohibition, but laid by till after sentence, and during appeal served it; held that it was waived: it is otherwise where after prohibition granted and not served by the party, excommunication is pronounced for want of answer.—15 Jac. C. B. *Anon*. i. 262

33. If the prohibition be faulty, yet no consultation shall go, if it appear to the court that the suit in the spiritual court was not well founded, as it was there heard, though he might have had a suit in another manner.—18 Jac. C. B. *Slade v. Drake*. i. 314

34. Defamation of the parson's title to the tithes is punishable in the ecclesiastical court.—21 Jac. B. R. *Gwyn v. Merryweather*. iii. 1211

35. LEY, Ch. J. said that whatever is allowed for divine service, or is in lieu of tithes and offerings, is become a thing ecclesiastical.—21 Jac. B. R. *Williams v. Gibbs*. i. 326

36. In a suit in the spiritual court for stopping and hindering the carrying away of tithes, prohibition will be granted, if the libel do not set forth the statute specially, upon which it is founded.—17 Car. C. B. *Anon*. i. 402

37. If the cause of action for tithes of lands arise in one diocese, a defendant may be cited to appear there, though he may reside in another; and the case is not within the statute.—15 Car. 2. B. R. *Westcote v. Harding*. i. 439

38. An agreement for a year, as well as for life or years, is triable in the spiritual court, if the suit be for tithes in kind; but if for money, prohibition will lie.—18 Car. 2. B. R. *Buickley v. the Bishop of Chester*. i. 449

39. In a suit for tithes by four proprietors, the defendant pleaded a release by one; on affidavit of refusal, a prohibition *nisi* was granted in B. R. but upon the production of an affidavit and the act of the spiritual court allowing it, it was discharged, for by 32 H. 8. c. 7. § 2. they have power to judge of it; and if they admit it, although they hold the release by one insufficient, the temporal court cannot alter it.—20 Car. 2. B. R. *Tatham v. Symons*. i. 459

40. Upon suggestion of refusal of a plea that the parson suing had not read the articles according to the statute, a prohibition *nisi* was

granted *quo usque* the plea was accepted; but, by the court, such a plea is triable by the spiritual court.—20 Car. B. R. *Cleobly v. Adams*. i. 477

41. The spiritual court may proceed upon an act, or other temporal matter incident, as long as they proceed according to the rules of common law.—24 Car. 2. B. R. *Sir W. Juxon v. Lord Byron*. i. 496

42. The bare question of a precedent lease may be tried in the spiritual court, but if they decide contrary to the common law, prohibition lies.—27 Car. 2. B. R. *Lady Fitz Williams v. Westby*. i. 505

43. Prohibition was denied on a suggestion of a title by letters-patent and that they are conusable by the common law, for having conusance of the principal matter, they have consequently of the patent.—2 Jac. 2. B. R. *Anon*. i. 551

44. No prohibition will lie upon any composition for any tithes, whether for life or years, and the remedy is to appeal to the arches, if the inferior court should refuse a plea of composition.—1 W. & M. B. R. *Bradshaw v. Swanton*. i. 560

45. The clause of 2 E. 6. which gives double value for carrying away corn, &c. before tithes set out, gives the spiritual court conusance for refusing to set out tithes.—8 W. 3. B. R. *Gale v. Ewer*. i. 621

46. Where a statute gives a remedy in the temporal court for what was before suable in the spiritual court, its jurisdiction is not taken away, unless the statute alter the offence, and make it of higher degree.—9 W. 3. B. R. *Rex v. Sanchee & Tipper*. i. 627

47. If a parson live in the diocese of York and there subtract tithes for land, and afterwards remove and inhabit in another diocese, yet he may be libelled against in the spiritual court of York.—10 W. 3. C. B. *Machin v. Moulton*. i. 630

48. *Quære*, whether a prohibition lies to the spiritual court to stay a suit for Easter offerings, on a suggestion in the libel of a custom to pay them, where sentence was given against the defendant by default. Although a defendant make no defence in the spiritual court, yet it is the practice there to require proofs of the plaintiff's case.—5 Geo. B. R. *Bows v. Jurat*. i. 748

49. Libel in the spiritual court by an impropriator for subtraction of tithes. The defendant, the occupier, pleaded a parol agreement with the impropriator's agent for the purchase of the tithes after they were severed, and tendered the purchase money: the ecclesiastical court rejected the plea, apparently on the ground that, according to the ecclesiastical law, an agreement with the agent of a proprietor of

tithes, will not bind the proprietor. The court (King's Bench) held this to be a ground for prohibition, and not of appeal, because on appeal the superior ecclesiastical court would adhere to the same law, whilst by the common law the agreement would be binding.—6 Geo. 3. B. R. *Chave v. Calmel.* ii. 214

50. *Semble*, that on a certificate from the judge of a spiritual court, that A. B. had disobeyed and contumelied the process of that court, in not appearing to answer the parson in a cause of subtraction or non-payment of tithes and other ecclesiastical rights and emoluments, promoted by the parson against the said A. B.; and desiring the assistance of two justices of the peace, for the ordering and reforming the said A. B.; according to stat. 27 H. 8. c. 20. confirmed by 2 & 3 Edw. 6. c. 13; a commitment by the two justices of the said A. B. to gaol, without bail or mainprize, until he shall have found sufficient surety to give due obedience to the process, proceedings, decrees, and sentences of the ecclesiastical court, is a good commitment, though there has been no decree or sentence of the ecclesiastical court.—7 Geo. 3. B. R. *Rex v. Owen.* ii. 223

51. Where the right to tithes, or any other question, is between ecclesiastical persons, in their ecclesiastical character, the court of chancery will not interfere; but will leave it to the spiritual court, as being the proper court to determine the dispute.—12 Geo. 3. Canc. *Clare Hall v. Orwin.* ii. 264

SPOLIATION.

1. Spoliation lies where two parsons have colour for their admission to a church, and the right of advowson will not come in question.—38 Hen. 6. i. 39

STUBBLE.

1. If one pay tithe of wheat or rye by the sheaf, no tithe is due for the haulm on the same land, for it is but part of the stalk upon which the tithe sheaf grew.—4 Jac. B. R. *Grene v. Austen.* i. 164

2. If a man pay tithes of corn he shall not pay any tithes for the stubble that grows the same year upon the same land.—6 Jac. *Smith's case.* 1 Ro. Abr. 640.

3. Stubble mowed and used as fodder or manure, is not titheable.—36 Geo. 3. Scacc. *Tennant v. Stubbing.* ii. 425

SURVEY, PARLIAMENTARY.

1. The lands, possessions and evidences of archbishops and bishops, settled in trustees.—1646. c. 64. iv. 99

2. And the lands holden of other lords, by the rents and services accustomed, and discharged of tithes as fully, &c. iv. 100

3. Trustees empowered to appoint surveyors, who shall have full power to enter into and survey the premises, and to inquire as well upon oath as otherwise, what county-palatine, honours, manors, lordships, granges, messuages, lands, tenements, meadows, leasaws, pastures, woods, rents, reversions, services, parks, annuities, and other possessions, privileges, liberties, immunities, and hereditaments whatsoever, did at any time belong or appertain unto such archbishops or bishops, respectively, or to any other person or persons in trust for them, in right of the said archbishoprics and bishoprics, and what, and how much of the same is in possession, and the true yearly value thereof, and what, and how much thereof is in lease, and for what estate, and when and how determinable; when such leases or estate was made, and whether antedated, and what rents, services, and other duties are reserved and payable during such estate, or issuing out of the same. As also what rents, pensions, charges, or other sums of money are issuing, due, or payable out of the premises, or any part thereof: and what lands or premises are subject to any charitable use or uses; and to make one or more exact and particular survey or surveys, and certificates of their proceedings, which certificate and surveys shall be recorded, and all charters, evidences, court-rolls, and other writings belonging to all or any of the archbishops, bishops, archbishoprics, or bishoprics, or concerning any of the counties-palatine, &c. before-mentioned, shall be kept in such place in London, or Westminster, as the said trustees, or the major part of them, shall think fit and appoint.

4. And the said surveyors shall have power and authority to keep courts of survey within any of the counties-palatine, honours, manors, and premises; and to call before them any of the tenants or other persons whom they shall conceive to have any interest in any of the premises, to shew their writings and evidence, and discover what right, title or interest, they or any of them have, or may claim, of, into, or out of the same, or any part thereof. And also to examine by oath or otherwise, any person or persons (other than such as have or claim to have interest or title therein) for, or concerning the discovery of the contents, metes, bounds, extents, titles, rents, improvements, valuations, and jurisdictions, of all or any of the premises: and for the discovery of any records,

evidences, writings, or memorandums concerning the same. iv. 107, 108

5. That surveyors shall survey and inquire what timber, buildings, open quarries, or mines are upon any of the premises, and certify the condition and value thereof.

6. Provided, that nothing in this present ordinance shall compel the surveyors to make any admeasurement of the lands, or any particular survey of the number of acres, unless they in their discretion shall think fit: the intention of the houses being, that the said surveyors should make a speedy return of their several surveys, to the end that a speedy sale may be made thereupon.

7. That the register do receive all surveys, and certificates to be returned by the surveyors, and immediately after the receipt thereof, fairly enter and register the same, in books to be kept by him for that purpose, and in an orderly manner file, bundle up, and safely lay up and keep the originals.

8. That upon warrant and direction from the contractors, he do make forth, and fairly ingross in parchment, particulars of all such manors, lands, tenements, and hereditaments, buildings, woods, and other things surveyed and certified into his office by the surveyors, whereupon the contractors are to proceed, or intend to make any sale; and that he do examine and sign the same particulars, and deliver them to the contractors. iv. 112

9. Copies or duplicates of all surveys to be returned to the trustees so soon as assurances shall be made to the purchasers of the lands, or other things therein contained, shall forthwith be delivered over by the said trustees to the register, to be bundled up and safely kept by him as the other part of the said surveys returned to him by the said surveyors is appointed to be kept. And the said trustees shall not make or deliver out any copies of the said duplicates for the use and benefit of any private or particular person, or otherwise, to the prejudice of the register.—1646. c. 68. vi. 115

10. And if it shall appear upon the survey, or by proof upon oath, that any tenant or others, by the custom of any manor or place, have any custom or privilege, which in the purchase of the premises ought to be considered and allowance made to the purchaser for the same, the committee to certify the custom proved to the register, who is thereupon to make out a particular, upon which the contractors shall proceed to sell or make allowance unto the purchaser, and the trustees to convey, as if the same had been expressed in the survey.—1648. c. 122. iv. 124

11. The register empowered to amend the particular; and if any purchaser shall make it appear that the premises contracted for are

liable to any charge or incumbrance not mentioned in the survey, the contractors may allow to such purchaser so much as such charge shall be valued at.—1648. c. 122. iv. 127

12. The name and function of dean, sub-dean, dean and chapter, &c. abolished, and all their possessions, charters, deeds, &c. vested in trustees, to be held by the rents and services accustomed, and discharged from the payment of tithes as fully, &c.—1649, c. 24. iv. 130

13. Excepting parsonages and tithes appropriate, portions of tithes, &c. iv. 133

14. Surveyors to be appointed according to the provisions of the ordinances (1646. c. 64) respecting the sale of bishops' lands. iv. 133

15. Records and evidences belonging to the premises to be delivered to the purchasers; the surveys to be returned to the register, who shall sign all particulars upon which contracts shall have been made. iv. 135

16. Insufficient surveys to be amended; and notwithstanding the imperfections, the surveyor-general is to return the surveys to the trustees and register, so that the immediate tenants of any part of the premises expressed in the survey that is perfect, may proceed to purchase. iv. 138

17. Improvements, tithes, parsonages, &c. to be employed for the maintenance of a preaching ministry. iv. 140

18. The surveyors to make speedy, exact and particular surveys of all such impropriations, &c. iv. 142

19. All tithes appropriate, oblations, portions of tithes, &c. belonging to archbishops, bishops, deans, deans and chapters, and others of the hierarchy vested in trustees.—1649. c. 31. iv. 146

20. Commissions to be appointed for ascertaining the yearly value of ecclesiastical benefices and certifying the same into chancery. iv. 149

21. Surveys of appropriations and tithes to be transmitted to the trustees, and verified by the oaths of the registers and deputies.—1650, c. 5. iv. 156

22. Original surveys to be delivered to the register, who shall keep the same, and make and deliver copies to the trustees. iii. 165

23. The surveyor-general may amend and perfect imperfect surveys taken under the authority of the above acts and ordinances, by oath or otherwise.—1654. c. 14. iv. 171

24. Copies of the parliamentary surveys taken in 1647, admitted as evidence, because it was proved that the originals were burnt.—5 W. & M. Scacc. *Underhill v. Durham*. i. 581

TARES.—See GRASS.

1. For a prohibition to a libel for tithes of

green tares, it was suggested that there was not in the parish sufficient meadow or pasture for the draught cattle and milch kine; and that they had used to pay the tenth shock of their ripe tares; but in consideration that they gave their green tares to their cattle, they were discharged of tithes for the same. And it was held good; for the matter was the want of meadow and pasture; and for such tithes the parson has the tithes of the land cultivated with the cattle.—30 El. B. R. *Perry v. Soam*. i. 96

2. No tithe is due for grass in the swathe cut for working cattle, and for their maintenance in tillage.—9 Car. B. R. *Crawley v. Wells*. i. 382

3. If a man cut down grass, and before he makes it into hay, but being only put into swathes, he carry it away and give it to his plough cattle for their necessary sustenance, not having sufficient for their sustenance other ways, no tithes shall be paid thereof.—S. C. 1 Ro. Abr. 645.

4. A prohibition for tithes of tares cut green and given to plough cattle, and of head-lands fed, and mown and cut for plough cattle, granted upon suggestion of *special customs* within a parish.—10 Car. B. R. *Meade v. Thurman*. i. 383

5. If a parishioner prescribe, that whereas the greatest part of the land within the parish, and within the parishes next adjoining thereto, is arable land, so that for want of grass they must (“*doint*”) provide other sustenance for their plough cattle, and because he has used to cut and tie into sheaves the grain sown there, and to put them into shocks, of which the parson had the tenth shock, by which the parson has the benefit of the labour of the plough cattle, and in consideration thereof the parishioner has time out of memory, &c. used to be discharged of the tithes of green tares before they come to perfection, cut in small parcels in the time of harvest, or before, and given to his plough cattle for their sustenance, this is not a good *modus*, because if he cut them down he shall pay tithes for them, as well as if they had come to their perfection.—8 Car. B. R. *Saunders v. Paramour*. 1 Ro. Abr. 650.

6. But afterwards a prohibition granted in such case, this being alleged by way of custom.—10 Car. B. R. *Meade v. Thurland*. 1 Ro. Abr. 650.

7. A prohibition *nisi* was granted upon suggestion that tares, &c. sown and cut green for horses, had been tithe free.—25 Car. 2. C. B. *Stone v. Peacock*. i. 498

8. No decree was made upon an alleged custom that tares, &c. cut green and given to milch cows and beasts of the plough were tithe

free.—4 Ann. Scacc. *Waterman v. Jones*. i. 671

9. Tithes of tares cut green and used for fodder for cattle decreed. By three of the barons, *contra PRICE*, tares, whether green or ripe, are a great tithe.—1 Geo. Scacc. *Hodgson v. Smith*. i. 715

10. The court inclined to think, that vetches and clover cut green, and given to cattle used in husbandry, should pay no tithes.—3 Geo. 2. Scacc. *Hayes v. Dowse*. ii. 10

11. Tithes of tares cut green and given to cattle for the plough, and also those made into dry winter fodder decreed to the owner of the tithes of corn and grain, and not to the vicar, who claimed to be *entitled by endowment* to all small tithes of hay.—10 Geo. 2. Scacc. *Steers v. Brassier*. ii. 61

12. Vetches are great tithes, if mowed or cut when ripe; but if cut green for cattle, they are small tithes.—12 Geo. 2. Scacc. *Wallis v. Pain*. ii. 67

13. The exemption from tithes of clover cut green for fodder, depends upon the insufficiency of other food.—38 Geo. 3. Scacc. *Mantell v. Paine*. iii. 1380

14. *Semb.* that clover, tares, &c. cut green and given to horses employed in husbandry are not titheable, if there be no fraud on the clergyman.

Semb. That a horse employed generally for purposes of husbandry does not lose its exemption by being occasionally used as a riding horse.—57 Geo. 3. Scacc. *Dorman v. Currey*. iii. 817

15. *Semble*, that a farmer claiming exemption from tithes for green food cut for foddering husbandry horses, must shew that such horses were used in husbandry, and that he had no other sustenance (of any sort) for them on his farm. Both those points are questions of fact, and the finding of the jury is conclusive. Husbandry horses being used occasionally by the farmer for other purposes, does not deprive the farmer of his privilege of exemption, where he would be otherwise entitled to it. The amount of the tithes sought to be recovered being small, is a ground for refusing a new trial, or, at least, a second new trial.—58 Geo. 3. Scacc. *Stevens v. Aldridge*. iii. 879

16. Lucerne, tares, clover, and other artificial grasses, cut green and given to husbandry horses and cattle employed on the farm on which they are grown, are not therefore exempt by general custom from the render of tithes, unless the farmer has no other fodder or sustenance of any sort on the farm, for the subsistence of such horses, &c.—59 Geo. 3. Scacc. *Dorman v. Sears*. iii. 937

17. Clover, tares, or grass, when separated

from the soil by a scythe or other instrument, though used green, follow the nature of their genus, and are articles of great tithe: but, if separated by the mouth of an animal, become agistment and a small tithe.—59 Geo. 3. Consist. Court. *Lagden v. Flack.* iii. 973

18. The tithe of seed-tares is a great or rector's tithe, and passes to the impropiator, under a grant "*decimarum garbarum et granorum*," when coupled with evidence of perception.—4 Geo. 4. B.R. *Dawes v. Benn.* iii. 1106

19. The tithe of tare seed held to be a small tithe.—1821. Canc. iii. 1393*

20. A title in portioners to the tithes of corn, grain, and hay, does not, as a necessary consequence, give them a title to the tithes of clover, vetches, and tares cut green, and consumed by cattle.

21. *Seem*, that if a title were made out to the tithes of clover, vetches, and tares cut green, it would not be a defence to a bill for an account and payment of them, that those articles were given for food to husbandry cattle.—5 Geo. 4. Scacc. *Lewis v. Young, Bart.* iii. 1135

TEASELS.

1. Teasels are a small tithe.—11 W. 3. Scacc. *Hunt v. Codrington.* i. 636

TENDER.—See TITHES, where to be paid.

1. The defendant tendered five pounds to the plaintiff, desiring him to take his tithe thereout. The court declared it to be no good tender.—4 Ann. Scacc. *Drake v. Booking.* i. 679

2. A defendant by answer tendered 10*l.* with costs. The court afterwards dismissed the bill, and ordered the plaintiff to pay costs to the defendant from the time of the tender.—1 Geo. Scacc. *Mason v. Watson.* i. 709

3. A tender must be made before, as well as by the answer, to save the defendant his costs.—5 Geo. Scacc. *Anon.* i. 739

4. Tender of payment for tithes admitted after answer, but *quære* whether by consent.—5 Geo. Scacc. *Bishop of Exeter v. Trenchard.* i. 749

5. Tender of a much larger sum of money than the tithes due, with a request that the parson would take what he thought fit, held not to be a good tender.

6. Tender of a smaller sum than the amount of the tithes, a larger sum being offered, and submitted by the answer to be paid, held not a good or sufficient tender.—14 Geo. 2. Scacc. *Rumney v. Willis.* ii. 85

7. Where a tender was made previously to the filing of a bill for tithes, and was insisted

on by answer, and the plaintiff was unable at the hearing to charge the defendant with more than the sum tendered, the bill was dismissed with costs.—31 Geo. 2. Scacc. *Hawkins v. Harkness.* ii. 156

8. To a bill for an account of tithes, the defendant demurred, on the ground that the plaintiff had not stated any case entitling him to an account; the plaintiff submitted to the demurrer, and amended his bill; the defendant put in an answer, and insisted on a tender made after the filing of the original bill, but before the filing of the amended bill; and the plaintiff, not being able to charge the defendant with more than the sum tendered, was decreed to pay the defendant's costs of the suit.—2 Geo. 3. Scacc. *Henning v. Willis.* ii. 188

9. Where a sum is tendered for tithes, if it be less than the sum actually due, costs follow the account.—26 Geo. 3. Scacc. *Worrall v. Nicholls.* iii. 1337

10. The answer insisting on a *modus*, a motion for leave to pay in arrears of the *modus* was refused; such application being only granted where the thing demanded is tendered. But the court considered the tender in the subsequent costs.—33 Geo. 3. Scacc. *Dean and Chapter of Bristol v. Donnesthorpe.* ii. 374

11. A motion, that the plaintiff may accept the amount stated by the answer to be due for tithes with costs, to that time, does not require any notice; but the order must be served.—34 Geo. 3. Scacc. *Parker v. Turner.* iii. 1375

12. In a suit for tithes, the defendant, before answer, moved for leave to pay into court a specified sum, as the full value of the tithes, together with the costs then already incurred, and the plaintiff to proceed at the peril of costs; but the court refused the application, for until answer and discovery, the plaintiff could not tell whether the amount offered to be paid was the full value of the tithes.—34 Geo. 3. Scacc. *Hull v. Matthews.* ii. 412

13. The defendant having by answer admitted certain tithes to be due, but resisted the demand of certain other tithes, he moved for leave to pay into court the value of the tithes admitted by him to be due, together with the costs of that part of the suit, and the plaintiff to proceed at his peril; but the court refused to allow the application, except on payment of the whole costs then incurred.—36 Geo. 3. Scacc. *Worrall v. Miller.* ii. 424

14. A tender admits the contract and facts stated in the declaration; therefore where a count averred that in consideration that the plaintiff would let to the defendant certain tithes, the defendant agreed to pay 4*l.* and that plaintiff did let the said tithes, and did permit the defendant to take them, a tender on all the counts generally precluded the defen-

dant from shewing a legal interruption to his taking them if any such interruption had subsisted.—50 Geo. 3. C. B. *Cox v. Brain*. ii. 582

TENTH.—See AUGMENTATION.

TERRIERS.—See EVIDENCE.

TITHES.

- I. *What*.
- II. *Great and small*.
- III. *To whom payable*.
 1. Rector.
 2. Vicar, see *Parson and Vicar*.
 3. Portionist.
 4. Sequestrator.
 5. Chaplain.
 6. King, see *King—Extra parochial Tithes*.
 7. Impropiator, see *Impropiator*.
- IV. *By whom payable*.
- V. *For what payable*.
- VI. *When to be paid*.
- VII. *Where to be paid*.
- VIII. *How to be paid and taken*.
- IX. *How and where to be tried*.
 1. Common Law.
 2. Chancery. A. *Bill & Consolidation*.
B. *Demurrer*.
C. *Plea*.
D. *Answer*.
E. *Decree*.
F. *Issue*.
G. *Costs*.
Tender, see Tender.
 3. Exchequer. A. *Bill & Consolidation*.
B. *Injunction*.
C. *Demurrer*.
D. *Plea*.
E. *Answer*.
F. *Replication*.
G. *Interrogatories*.
H. *Deposition*.
I. *Publication*.
K. *Decree*.
L. *Rehearing*.
M. *Commission*.
N. *Account*.
O. *Issue*.
P. *Costs*.
Tender, see Tender.
 4. *Spiritual Court, see Spiritual Court*.
 5. *Before Justices, see Tithes, small*.
- X. *How and by what words they pass*.

Tithes.—1. *What*.

1. Where a prior claimed the tenth part of all kind of corn and hay in certain land, after the tithes set out and delivered to the parson, such claim was held to be a lay profit, though claimed by a religious person, and that the conusance of it properly belonged to the temporal court.—44 Edw. 3. i. 24

2. Tithes are due by the law of God *ex debito* for the occupation and tillage of the occupier in whose hands soever the land come, if it be not the hands of the parson himself.—30 Hen. 8. i. 50

3. Tithes are of common right, and belong to the parson by divine right and canonical institution, and so run with the land.—5 El. Anon. i. 58

4. Tithes are not issuing out of the land, as rent is or a thing which charges the land as common, &c. but the tithes are to be taken of the profits of the land, as corn and grain.—26 El. Exch. *Whiskard v. Futter*. i. 84

5. General words shall not discharge lands of tithes, for they are not issuing out of land, but are things distinct from the land.—38 El. B. R. *Green v. Balser, or the Archbishop of Canterbury's case*. i. 113

6. *Quota pars, i. e. decima pars*, which we call tithes, is an ecclesiastical inheritance collateral to the estate of the land, and of their proper nature, due only to an ecclesiastical person by the ecclesiastical law, and therefore no unity of possession can either extinguish or suspend them; but they, notwithstanding any unity, remain *in esse*, so that they may be demised or granted to any spiritual man, notwithstanding any such suspension. Tithes are more collateral to land than a warren, which the owner of the land has in it.—10 Jac. C. B. *Priddle v. Napper*. i. 205

7. It was said by the court in this case, that before the stat. 2 E. 6. all prohibitions to the spiritual court were *quia secutus est de laico feodo*: for when a man had a *modus decimandi*, the corn and other things were lay things.—11 Jac. C. B. *Norton v. Lyster*. i. 219

8. In debt for rent brought by executors, they declared that their testator was seized *pur auter vie* of certain tithes, and demised them to the defendant for years, rendering rent, and for 400*l.* arrear they brought debt. On demurrer it was held to be a rent, although not in point of remedy, and that the executors should not have it, because it belonged to the reversion.—13 Car. 2. B. R. *Tipping v. Grover*. i. 435

9. Tithes are a tenement.—4 Geo. B. R. *Rex v. Shingle*. i. 738

10. A double tithe may be payable, for one tithe may be due by custom, and another of

common right.—5 Geo. Scacc. *Earl of Scarborough v. Hunter.* i. 747

11. Predial tithes are those which arise immediately from the soil. Mixed tithes arise mediately, through the increase of animals.—36 Geo. 3. Scacc. *Scarr v. Trinity College.* i. 429

12. Tithes are a tenement; and are, as such, within the exemption (in 19 Geo. 3. ch. 56. s. 14) from the duty on sales by auction imposed by the 43d Geo. 3. c. 69, schedule A.—57 Geo. 3. Scacc. *Rex v. Ellis.* iii. 776

13. Tithes are a property of a very special nature. They do not belong to the owner of the land or of the animals in respect of which they arise; nor, at the time of their origin, were they appropriated to any particular persons, so as to give them a right to demand them; for, as far as we have any traces of their history, it appears to have been left to the election of the owner of the other nine parts of the titheable matters, to dispose of the tenth in distribution amongst the clergy, and sometimes amongst the clergy and objects of charity. The first institution of the payment of tithes in this country, as rendered in latter days, no where clearly appears; and, I apprehend, it has not hitherto been ascertained, at least to the satisfaction of any of the learned persons who have made it the object of their research. Tithes, indeed, were probably introduced into this country as early as Christianity itself, but as to the circumstances, in what manner, and under what regulations, we have so far no authentic records. It is said, and perhaps correctly, that in the earlier ages, the owners of property yielding titheable articles could not use the whole for their own benefit, but were obliged to render the tenth part to some of the officiating clergy as his preference should direct him, or, as others say, to the bishop, to be applied by him for the use of the clergy, or to be administered in charity. In progress of time, (but when does not clearly appear,) a decree was made for the appropriation of the tithes, whereby it was ordained, and thereupon it became part of the common law, that the tithes should be paid in the different parishes wherein they accrued, to the parson of the particular parish. When parishes were first established in this kingdom is not with any degree of certainty known, but after they were established, whether it were by common law or by statute, for writers differ upon that, the clear result of all the inquiries seems to be, that the tithes were appropriated to the parsons of the several parishes in which the titheable matters were produced, and their right to demand and enforce the render of them became part of the general law of the land.—Ld. Ch. Baron.

60 Geo. 3. Scacc. *Attorney General v. Lord Eardley.* iii. 986

II. Great and Small.

1. No action lies upon 2 E. 6. for small tithes.—10 Jac. C. B. *Anon.* i. 203

2. The nature of the thing and not the value makes it small tithes.—16 Jac. B. R. *Britton v. Ward.* i. 298

3. Things which in their own nature are small tithes may become great, if all the profit of the parish consist therein. *Quære tamen.*—1 Car. C. B. *Udall v. Tindall.* i. 339

4. Rape seed is not corn, but it is among the small tithes, and when the prescription is for those it shall be included.—[*Bridgeman.*]

5. Upon evidence at bar it was agreed, if the vicar prescribe, or shew a composition that the parson had used to have only the tithe of corn, there the vicar shall have the tithes of rape-seed and other new tithes, as woad, hops, &c. but if the vicar have only the small tithes, the parson shall have them and not the vicar.—[*Yelverton.*] 6 Car. B. R. *Robinson v. Brooke.* i. 374

6. Hops, woad, and such small things of new invention, are in their nature small tithes, and having been introduced within time of memory, cannot be the subject of specific moduses, although they will be covered by a modus in lieu of the small tithes.—22 Car. 2. B. R. *Crouch v. Rieden.* i. 481

7. It was held by three judges against Holt, Ch. J. (who was absent when judgment was finally given,) that tithes are great or small according to the quality of the thing itself, and not the quantity grown.—5 W. & M. B. R. *Wharton v. Lisle.* i. 579

8. But according to the report 12 Mod. the three judges held, that if the greater part of the parish be sown with small tithes the parson shall have them. *ib.*

9. If small tithes be not paid in 20 days after demand, two justices not interested may summon persons complained of, and on default of appearance determine the complaint, with costs not exceeding 10s.—7 & 8 W. 3. c. 6. iv. 189

10. On refusal to pay ten days after notice, the constable may distrain.—§ 3.

11. Not to extend to London or any other place settled by act of parliament.—§ 5.

12. No complaint to be heard unless made within two years.—§ 6.

13. Persons aggrieved to appeal to the sessions.—§ 7.

14. No judgment to be removed unless the title be in question.—*ib.*

15. Persons insisting on any prescription, &c. giving securities for costs, justices not to proceed.—§ 8.

16. Persons suing for tithes not exceeding 40s. in the exchequer or any of the ecclesiastical courts, not to have the benefit of this act.—§ 14.

17. On an appeal to the sessions, if the right of tithes come in question, the court cannot proceed in the cause.—6 Geo. B. R. *Rex v. Furness*. i. 750

18. The complaint to found an order for non-payment of small tithes under 7 & 8 W. 3. must be in writing.—6 Geo. B. R. *Rex v. Furness*. i. 750

19. 'Whereas in the seventh and eighth year of King William the Third an act was made and passed, intituled, "An act for the more easy recovery of small tithes," whereby amongst other things therein enacted, two or more of his Majesty's justices of the peace are authorised and required to hear and determine complaints touching tithes, oblations and compositions subtracted or withheld, not exceeding forty shillings; and whereas it has become expedient to enlarge such amount and also to extend the said act to all tithes whatsoever of certain limited amount; be it enacted, that such justices of the peace shall, from and after the passing this act, be authorised and required to hear and determine all complaints touching tithes, oblations and compositions subtracted or withheld, where the same shall not exceed ten pounds in amount from any one person, in all such cases, and by all such means, and subject to all such provisions and remedies, by appeal or otherwise, as contained in the said act of King William, touching small tithes, oblations and compositions not exceeding forty shillings: Provided always nevertheless, that, from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the act is set forth.—33 Geo. 3. c. 12. § 4. iv. 238

20. By 7 & W. 3. c. 6. a summary remedy is given before two justices for the recovery of small tithes, under the value of 40s. [increased to 10l. by 53 Geo. 3. c. 127. s. 4.]; by s. 7. which gives an appeal to the sessions, the certiorari is taken away, "unless the title to the tithes should be in question;" and by s. 8. if any person complained against for subtracting tithes, should insist before two justices, upon any prescription, composition, or *modus decimandi*, agreement, or title, in order to free himself from the tithes claimed, and deliver the same in writing to the justices, subscribed by him, and should give the party complaining security, to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law, to be had for that purpose in any supe-

rior court, should be given against him; in case the prescription, &c. should not upon such trial be allowed, in such case the justices should forbear to give any judgment of the matter, and the party complaining should be at liberty to prosecute him for the subtraction in any court in which he might have sued before the act. *Quære*, whether by this act the justices have jurisdiction to try a *modus decimandi*? At all events, where, after summons and appearance, two justices made an order under this statute upon a defendant to pay the value of certain small tithes, and upon the trial of an appeal against the order, the defendant then, for the first time, offered evidence of a *modus decimandi*, which was rejected: held, that the sessions did right, and that if the defendant meant to avail himself of a *modus* as ground of defence, he was bound to submit his evidence to the two justices in the first instance.—4 Geo. 4. B. R. *Rex v. Jeffery*. iii. 1098

III. To whom Payable.—1. Rector.
See *Extra parochial Tithes—Parson and Vicar*.

1. Tithes of wool and lamb due to the guardian of the spiritualities of a vacant see, as appropriate rector.—18 Edw. 2. i. 11

2. In former times, before a constitution newly made by the pope, the patron of a church would grant tithes within his parish to another parish.—7 Edw. 3. i. 14

3. In ancient time every man could grant the tithe of his land to what church he pleased.—44 Edw. 3. i. 24

4. A prioress claimed tithes, as appertaining to her priory.—46 Edw. 3. i. 25

5. Trespass by the parson of E. for corn taken in E., the defendant says he is parson of W. and took it as his tithes, and the plaintiff claimed it as his tithes, and so concludes to the jurisdiction, the court held, that where a parson of one parish prescribes for tithes in another, as appendant to his church, he need not claim them as a portion.—14 Hen. 4. i. 29

6. Before the council of Lateran it was lawful for every one to distribute and pay his tithes as he chose, or any portion thereof to any church according to his best devotion.—7 Edw. 6. *The Dean and Chapter of Bristol, or the Serjeants' case*. i. 51

7. The tithes, fruits, oblations, obventions, commodities, advantages, rents, and all other emoluments whatsoever, revenues, casualties, or profits, certain and uncertain, offering or belonging to any archdeaconry, deanry, prebend, parsonage, vicarage, hospital, warden-ship, provostship, or other spiritual promotion, benefice, dignity, or office, (chauntries only except), within this realm, or other the king's

dominions, growing, rising, or coming, during the time of vacation of the same promotion spiritual, shall belong and affere to such person as shall be thereunto next presented, promoted, instituted, inducted, or admitted, and to his executors, towards the payment of the first fruits to the king's highness, his heirs and successors; any usage, custom, liberty, privilege, or prescription, to the contrary had, used, or being, in anywise notwithstanding.—28 Hen. 8. c. 11. s. 3. iv. 36

8. Persons withholding such tithes, &c. to forfeit the treble value.—s. 4. iv. 36

9. Before the Council of *Lateran*, every one might have paid his tithes to whom he would, but by that council they were annexed to the rectory.—43 El. B. R. *Sands v. Drury*. i. 152

18 Jac. B. R. *Sir Edw. Coke's case*. i. 314

10. A prescription to pay tithes to the curate, is not good ground of discharge of tithes to the rector, for the curate cannot prescribe against his master, who may remove him at his pleasure.—2 Jac. B. R. *Bott v. Brabalon*. i. 160

11. A layman prescribed to have all the tithes within his manor of D., he maintaining a chaplain in the church of D. COKE held such a prescription bad, both because it was not alleged that the church of D. and the manor of D. were in the same parish, and so no consideration to the parson; and because the maintenance of the chaplain was not alleged to have been time out of mind.—12 Jac. B. R. *Boocher v. Rogers*. i. 223

12. BERKELEY, J. said, that the right of tithes, *de mero jure*, belongs to the parson of the parish; and when the abbeyes were dissolved by 27 H. 8. the right of tithes was revived to the parson.—11 Car. B. R. *Sydown v. Holmes*. i. 383

13. All tithes *de jure* belong to the parson.—15 Car. B. R. *Anon*. i. 398

14. An incumbent contracted with a parishioner to pay a certain sum for increase of tithes in kind, and died; and his successor sued in the spiritual court for them: prohibition was granted.—17 Car. B. R. *Hichcocke v. Hichcocke*. i. 401

15. Where a parson made a lease for three years and died at the end of two years and a half, and his successor filed a bill for the profits of the last half year against the lessee, omitting to make his predecessor's executors parties, the court dismissed the bill.—1 W. & M. Canc. *Bentham v. Alston*. i. 559

16. Incumbent of a parsonage, being old, he, together with the grantee of the next avoidance, join in the lease of the tithes, rendering the rent half yearly; incumbent dies before first half year; lessee gathered in the tithes except a small part, which he got in afterwards. Who shall have the rent?—S. C. i. 559

17. Where tithe has been paid, the court will be inclined to presume the reading of the articles.—9 W. 3. Cam. Scacc. *Harris v. Adge*. i. 624

18. The tithes of lands in one parish may be due to the rector of another parish.—13 Ann. Scacc. *Sheris v. Baskerville*. i. 709

19. Possession by a layman and his ancestors from the time of H. 8. of an ancient and deserted rectory, and receipt of the tithes without any rector being appointed, or the cure being served from that period; and from which time, the small tithes had been paid to the vicar of an adjoining parish; held not to be sufficient evidence of a union of the rectory with the adjoining parish, or of an appropriation to a lay patron; and a parson presented by the crown was held entitled to the tithes.—21 & 22 Geo. 2. Scacc. *Macgill v. Le Strange*. ii. 115

20. The rector is of common right entitled to tithe in kind, and if a *modus* be insisted upon as a defence, it must be maintained by the defendant in law and fact.—27 & 28 Geo. 2. Canc. *Chapman v. Smith*. ii. 141

To whom Payable.—2. Vicar
See Parson and Vicar.

To whom Payable.—3. Portionist.
See Portion—Impropriator.

1. In former times, before a constitution newly made by the pope, the patron of a church would grant tithes within his parish to another parish. But a man cannot grant his extra parochial tithes to whom he will; and according to HERLE, C. J. the bishop of the place shall have them.—7 Edw. 3. i. 14

2. The parson held two sheaves in a parish, and an abbot the third.—38 Edw. 3. i. 21

3. A parson of one parish may have tithes in another parish.—39 Edw. 3. i. 21

4. A parson claimed the third tithe sheaf in a place, and a prior the other two sheaves, as parson of the parish.—43 Edw. 3. i. 23

To whom Payable.—4. Sequestrator.

1. A sequestrator cannot bring a bill for tithes.—4 W. & M. Scacc. *Berwick v. Swanton*. i. 574

2. A suit in the spiritual court may be brought by a curate to whom sequestration has been granted by virtue of 28 H. 8. c. 11.—13 W. 3. C. B. *Buxton v. Cookerman*. i. 643

3. A sequestrator cannot maintain a bill for tithes, unless the bishop of the diocese be joined with him.—12 Ann. Scacc. *Bishop of Norwich & Eachard v. Bucklea*. i. 705

4. Bill for tithes by the bishop and the seques-

trator during the incapacity of mind of the incumbent, dismissed for want of making the incumbent or his committee a party.—10 Geo. Scacc. *Bishop of London v. Nicholls.* i. 793

5. *Quære*, Whether in a bill against a sequestrator during the vacancy of a church, the bishop ought not to be a party.—11 Geo. Scacc. *Jones v. Barrett.* i. 804

To whom payable.—5. Chaplain.

1. A chaplain put in and removed at pleasure cannot claim tithes.—5 W. & M. Cam. Scacc. *Wild v. Acton.* i. 575

To whom payable.—6. King.
See *King—Extra-parochial Tithes.*

To whom payable.—7. Impropriator.
See *Impropriator.*

IV. By whom Payable. See *Setting out Tithes.*

1. If a person sever his hay, and afterwards sell it, the vendor and not the vendee shall pay tithes.—16 Jac. B. R. *Cannon's case.* i. 303

2. If one who has some colour of title, come and sow the land, and set out the tithes, though he be a disseisor, this is good for the parson; otherwise it is, where one without any colour sets out tithes, which is no setting out in law.—1 Car. B. R. *Mountford v. Sidley.* i. 351

3. In a suit for tithes of apples defendant said they were stolen and never came to his use; it was held that if a man suffered another to pull his apples the parson should have tithes, but if they were taken by persons not known, he should not have tithes.

4. It was said they were not titheable before plucking, but if they be suffered by negligence to hang so long that they are embezzled, tithes shall be paid.—4 Car. C. B. *Anon.* i. 366

5. A tortious occupier of lands shall pay tithes.—6 Car. B. R. *Rawlins v. Wright.* i. 373

6. If grass be sold, he who buys it must pay the tithe.—7 Car. B. R. *Lockin v. Davenport.* i. 374

7. If the owner of a nursery sell trees and pull them up himself he shall pay the tithes, but if he sell them particularly, the vendee shall pay them: so if corn be sold standing, the vendee shall pay the tithe, but if sold after severance the vendor shall pay it.—16 Car. 2. Scacc. *Grant v. Hedding & Ball.* i. 442

8. An occupier of lands may sell his growing

crops, subject to the payment of tithes, and may discharge himself from the payment of such tithes, by subjecting the purchaser thereto; but to effect such discharge, he must give notice to the parson of the sale, and who the purchaser is.—17 & 18 Geo. Canc. *Nightingale v. Osbaldiston.* ii. 94

V. For what payable.

See *Grass—Lime—Rabbits—Trees, &c.—Discharge.*

1. No tithes of marriage goods shall be paid in Wales.—2 & 3 Edw. 6. c. 13. s. 16. iv. 89

2. When the land lies fresh, no predial tithes shall be paid, but personal tithes for the cattle which feed upon it.—26 El. Exch. *Whiskard v. Futter.* i. 84

3. It was said that no tithes should be paid of heath, turf, and broom, if tithes had been paid for the cattle which had gone upon the land; some thought that it should be alleged that those tithes had used to be paid for all other tithes.—29 El. B. R. *Anon.* i. 90

4. No tithes are due of rabbits, but by custom, for nothing *feræ naturæ* is titheable by our law, as partridges, or fish in a pond.—9 Car. B. R. *Anon.* i. 382

5. Tithes ought to be paid of things which grow and renew from year to year by the act of God.—11 Jac. C. B. Dr. *Graunt's case.* i. 222

6. Turf, gravel, and chalk, are part of the freehold, and not titheable.—22 Car. 2. B. R. *Amiles v. Chambers.* i. 480

7. No tithe is due of brick, because part of the soil.—28 Car. 2. C. B. *Stoutfil's case.* i. 509

8. Tithe ore is not due of common right, but by particular custom only.—4 Jac. 2. Canc. *Buxton v. Hutchinson.* i. 554

9. No tithes are due of any thing whereby the tithes are increased.—9 W. 3. Scacc. *Anon.* i. 625

10. Tithes are not due for the profits of a trade.—10 Geo. 3. Scacc. *Wilson v. Mason.* ii. 240

11. Potatoes and turnips consumed in the family of the grower are liable to the payment of tithes.—58 Geo. 3. Scacc. *Williamson v. Lord Lonsdale.* iii. 870

VI. When to be paid.

See *Wool, &c.—Setting out Tithes.*

VII. Where to be paid.

1. All and every person which has or shall have any beasts, or other cattle titheable, going,

feeding, or depasturing in any waste or common ground, whereof the parish is not certainly known, shall pay their tithes for the increase of the said cattle so going in the said waste or common, to the parson, vicar, proprietor, portionary, owner, or other their farmers, or deputies of the parish, hamlet, town, or other place where the owner of the said cattle inhabits or dwells.—2 & 3 Edw. 6. c. 13. § 3. iv. 87

2. Where it is not known in what parish the lands lie, the tithes of cattle feeding there shall be paid to the parson of that parish to whom they have been paid for time immemorial; but if there be no usage, they shall be paid to the parson where the owner of the cattle lives, according to the provisions of the stat. 2 & 3 E. 6.—26 El. Exch. *Anon.* i. 84

3. In an action upon the case, a custom was stated to pay so many cheeses, which the plaintiff tendered at Landone, but the defendant refused to take them away, but suffered them to continue in plaintiff's house, *per quod*, &c. Upon demurrer, two judges held against Ley, Ch. J. that the particular place of the tender ought to have been stated in the declaration: the case was now adjourned, and said by *Godbold* to have been afterwards determined for the plaintiff.

4. The tender ought to be where, by the ordinary course, the thing has its being; as at the place of shearing the sheep, the parson is to demand his tithe of wool; things which are ordinarily in the house, as butter, cheese, &c. are to be tendered there; and there they are to be demanded, and thereof notice is to be given to the parson; and the party is not bound to carry them to the parson's house.—21 Jac. B. R. *Wiseman v. Denham.* i. 328

VIII. How to be paid and taken.—See SETTING OUT TITHES.

1. Of common right, every person may enter to gather his tithes, and to turn them till they are dry, and what shall be reasonable time for that purpose shall be tried.—12 Edw. 4. i. 46

2. Tithes shall be paid according to the custom of the parish where they be due.

3. The offender in subtracting of tithes shall be convented before the ordinary.

4. The offender shall be bound by two justices of peace, &c. to obey the ordinary's sentence.

5. Every person shall have his demand and defence according to the laws ecclesiastical.—27 Hen. 8. c. 20. iv. 29

6. All and singular persons of this realm, or other dominions, of what estate, degree or condition soever he or they be, shall fully, truly, and effectually divide, set out, yield, or pay all

and singular tithes and offerings, according to the lawful customs and usages of parishes and places where such tithes or duties shall grow, arise, come, or be due; and in case that shall happen any person or persons, of his or their ungodly or perverse will and mind, to detain and withhold any of the said tithes or offerings, or any part or parcel thereof, then the person or persons, being *ecclesiastical or lay* persons having cause to demand or have the said tithes or offerings, being thereby wronged or grieved, shall and may convent the person or persons so offending before the ordinary, his commissary, or other competent minister, or lawful judge of the place where such wrong shall be done, according to the ecclesiastical law.—32 Hen. 8. c. 7. § 2. iv. 50

7. The appellant shall pay costs of suit to the other party.—32 Hen. 8. c. 7. § 3. iv. 51

8. Offenders shall be bound by two justices of peace to obey the ordinary's sentence.—32 Hen. 8. c. 7. § 4. iv. 51

9. Provided always that no person or persons shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes, for any manors, lands, tenements, or hereditaments, which by the laws or statutes of this realm are discharged, or not chargeable with the payment of any such tithes.—32 Hen. 8. c. 7. § 5. iv. 51

10. Every of the King's subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield and pay, all manner of their prædial tithes, in their proper kind, as they rise and happen, in such manner and form as has been of right yielded and paid within forty years next before the making of this act, or of right or custom ought to have been paid: and no person shall from henceforth take or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he has justly divided or set forth for the tithe thereof the tenth part of the same, or otherwise agreed for the same tithes with the parson, vicar, or other owner, proprietary or fermor of the same tithes; under the pain of forfeiture of treble value of the tithes so taken or carried away.—2 & 3 Edw. 6. c. 13. § 1. iv. 86

11. At all times whensoever, and as often as the said prædial tithes shall be due at the tithing time of the same, it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or serjeant, to view and see their said tithes to be truly and justly set forth and severed from the nine parts, and the same quietly to take and carry away.—2 & 3 Edw. 6. c. 13. § 2. iv. 86

12. Every person exercising merchandises, bargaining and selling, clothing, handicraft, or

other art or faculty, being such kind of persons, and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as been common day-labourers) shall yearly at or before the feast of Easter, pay for his personal tithes, the tenth part of his clear gains, his charges and expenses, according to his estate, condition or degree, to be therein abated, allowed and deducted. Provided always, and be it enacted, that in all such places where handicrafts-men have used to pay their tithes within these forty years, the same custom of payment of tithes to be observed and to continue; any thing in this act to the contrary notwithstanding.—2 & 3 Edw. 6. c. 13. §§ 7, 8. iv. 87

13. By the canon law the tithe of corn is to be paid by the tenth ridge, therefore a custom to pay the tenth shock in lieu of rakings and tithe of head-lands is good.—29 El. C. B. *Anon.* i. 91

14. The tenth sheaf is no satisfaction for more than the corn of which it is the tithe, and therefore not for the rakings.—31 El. C. B. *Bird v. Adams.* i. 97

15. One prescribed to pay the tenth part of his corn in the sheaf, in discharge of all other corn raked and not in sheaf, which was held a void prescription, which is to be discharged of one tithe by the payment of another.—38 El. C. B. *Gryman v. Lewes.* i. 112

16. The parishioner ought of common right to cut down the corn and prepare it for the parson, and to set out the tithe from the nine parts.—3 Jac. *Perry v. Chauncey.* 1 Ro. Abr. 644.

17. The parishioner is not bound to gather and set up the corn in billocks or heaps; but it is a good manner of tithing to throw the shocks out.—6 Jac. B. R. 1 Ro. Abr. 644.

18. The parishioner of common right ought to make the corn into sheaves.—13 Jac. B. R. 1 Ro. Abr. 644.

19. If a parson be prevented from carrying his tithes by the usual roads and passages, he may sue in the spiritual court for the disturbance, and no prohibition lies, by reason of the covin.—6 Car. B. R. *Halsey v. Halsey.* i. 371

20. By the custom of England tithe corn shall be set out in sheaves, but each country has several ways.

21. Tithes of corn shall be paid in the sheaf, and if it be by the tenth stich or stook, it is by custom, and may be laid in discharge of other tithes, as rakings, &c.—18 Car. 2. B. R. *Ledgar v. Langley.* i. 448

22. Where a cart and horses, sent to take away tithe-wheat, had been stopped by the farmer, on the alleged ground that the cart wheels were shod with iron, which cut the clover sown amongst the corn, the court ordered

an inquiry into the damages sustained by the tithe-owner by reason of the detaining.—12 Geo. 1. Scacc. *Berney v. Chambers.* iii. 1236

23. The parson is entitled to go on to the grounds of his parishioners, for the purpose of collecting his tithes, with a waggon partly laden with the tithes collected from other parts of the parish, and is not bound to unload the waggon of the tithes collected of one parishioner, before he enters on the ground of another.—15 Geo. 2. Scacc. *Lake v. Braton.* ii. 87

24. The parson is, generally speaking, entitled to use the same road for carrying away his tithes which is used by the occupier for carrying the other nine parts; and if the road be stopped up or obstructed, he may bring an action on the case for damages.

25. Where two several distinct farms had formerly been in the occupation of one person, and a road or communication from the one to the other, and thence to the high road, had been used during such occupation, it was holden, that when the farms became occupied by different persons, the parson was not entitled to use that road, though the nearest and most convenient; for, that as the several occupiers might have no right to use it, the parson could have none.—18 Geo. 3. Scacc. *Bosworth v. Limbrick.* ii. 310

26. A parson is not entitled to carry his tithes home by every road which the farmer himself uses for the occupation of his farm. *Seemle*, that he may only use such road as the farmer does for the occupation of the close in which the tithes grew.—47 Geo. 3. C. B. *Colb v. Selby.* ii. 554

27. Where the occupier of a close of land stopped up an old gate or way through which the tithes had usually been taken, and carried his hay through a gap in the hedge of an adjoining field also belonging to him, and through which he required the rector to carry his tithe, but the latter refused to take them except through the old gate, which the occupier would not permit, it was holden that the rector was not “stopped or letten” from taking his tithes, within the meaning of the statute 2 & 3 Edw. 6. c. 13.—57 Geo. 3. Arches Ct. *Burnell v. Jenkins.* iii. 771

28. Tithe owners cannot control the farmer in his mode of cultivating, or of consuming the produce of his ground, provided he act *bona fide*, and without fraud.—5 Geo. 4. Scacc. *Lewis v. Young, Bart.* iii. 1136

IX. How and where to be tried—1. Common Law.—See TRESPASS—SEVERANCE—DEBT. 2 E. 6.

1. In trespass by the prior of C. against the bishop of C. and others, for carrying away, &c. the plaintiff's goods, the defendants pleaded the

excommunication of the plaintiff, and produced the bishop's letters depriving him; this plea being disallowed, the defendants pleaded that the bishop was impropriator of the church of D. and that he ordered his servants to the place, &c. to collect his tithes, and that they took the goods as his tithes, and submitted that the court would not take consuance of tithes. Plea held bad, as it did not state that the goods, of the taking of which the plaintiff complained, were the tithes of the bishop severed from the nine parts, but were merely the tithes of the parishioners, and therefore no answer to the action.—5 Edw. 3. i. 13

2. If a defendant justify as for tithes severed from the nine parts, and the plaintiff plead a grant of the defendant of the tithes of the land for a year or two years, *semble*, that the temporal court shall not be ousted of jurisdiction.—38 Edw. 3. i. 18

3. In covenant by the prior of D. against the abbot of S. on a deed of composition granted by the abbot to the prior, that he should tithe all his demesnes in S., it was objected, that the subject of the action being tithes, the court would not take consuance. But held, that this being an action of covenant, tithes could not be recovered in it, and the objection therefore disallowed.—38 Edw. 3. i. 19

4. If one who is not a parson bring trespass for taking his corn against another, who claims it as tithes, being a parson, the court shall not be ousted of jurisdiction, as it is not between two parsons; and therefore the plea is but a traverse of the writ, viz. that it is not the corn of the plaintiff.—38 Edw. 3. i. 20

5. In trespass by an abbot against a parson for taking his corn, the defendant pleads a composition, and concludes to the jurisdiction, as being tithes. *Morice* held, that the composition went in bar, and that the jurisdiction was therefore confirmed, but *Thorpe* and *Moubray* thought otherwise, as he concluded to the jurisdiction, and not in bar.—38 Edw. 3. i. 21

6. In trespass by a layman against a parson for corn taken, the defendant says, he is parson there, and the place within his parish, and the corn tithes severed from the nine parts, the court took consuance; for a layman cannot be intended to have tithes; whereupon he says, there was a dispute in the spiritual court between him and the prior of D. who claimed tithes there, and the defendant said that the prior himself was seised of land, and infeoffed another, so that he could not have tithes in his own lands; whereupon judgment was given for the defendant, and afterwards the plaintiff, claiming through the prior, got possession, and the defendant took them as his tithes; the court took consuance, and compelled the de-

fendant to plead, for that the plaintiff was a layman.—42 Edw. 3. i. 22

7. In trespass the defendant said, that he was servant to the parson, and took the corn as tithes, severed from the nine parts, and pleaded to the jurisdiction, which was not allowed, for he could not try the right of tithes, as his master could, and he therefore pleaded this matter in the bar.—42 Edw. 3. i. 24

8. A layman brought trespass, and the defendant claimed as farmer of the parsonage for tithes, the spiritual court shall not have jurisdiction; and they went to issue, whether the corn was severed from the nine parts as tithes, or not severed.—45 Edw. 3. i. 25

9. If in an action for trespass the defendant claim the corn for tithes, but his plea conclude to the action, the temporal court shall take consuance.—46 Edw. 3. i. 25

10. Although in replevin, if one justify or avow as bailiff, and plead to the action, it is no traverse to say that he is not bailiff; yet in trespass for corn taken, where one says he is bailiff to a parson, and so justifies for tithes, whether bailiff or not, is traversable, as it is only to oust the court of jurisdiction.—50 Edw. 3. i. 27

11. If any person of holy church be drawn in plea in the secular court for his own tithes taken, by the name of goods taken away, and he which is so drawn in plea makes an exception, or alleges that the source and substance of the business is only upon tithes due of right, and of possession to his church, or other benefice, that in such case the general averment shall not be taken without shewing specially how the same was his lay chattel.—1 Ric. 2. c. 14. iv. 12

12. In trespass by a parson against a layman, who pleaded the lease of a prior who claimed two tithe sheaves, and the plaintiff the third in a vill adjoining the plaintiff's: it was held that the temporal court should be ousted of jurisdiction.—7 Hen. 4. i. 28

13. As the question was of the right of tithes, the court would not take consuance, notwithstanding the plaintiff said that the defendant had let his parsonage for years. unexpired.—14 Hen. 4. i. 29

14. In an action of trespass by a parson against a layman, who pleaded that he took the goods as the tithes of his master, and so to the jurisdiction, the court overruled the plea and took consuance of the matter.—1 Hen. 6. i. 32

15. In trespass by a parson against one for taking corn, if the defendant justify as servant to another parson, as for tithes severed from the nine parts, within his parish; and the plaintiff reply, that he is parson of a parish adjoining, and that he has a portion within the other parish; wherefore he took the tithes, the court.

shall be ousted of jurisdiction, because the right of tithes will come in question.—31 Hen. 6.

i. 36

16. A parson may have assize for the rectory, churchyard and glebe, which are his freehold, and trespass for the tithes.—38 Hen. 6. i. 39

17. As soon as it appears by the pleadings that the right of tithes will come in question, the temporal court shall be ousted of jurisdiction, although it did not appear at first, in the same manner as the spiritual court, if the right of advowson come in debate.—38 Hen. 6.

i. 42

18. If a lessee of a parsonage bring an action of trespass for tithes severed from the nine parts, the temporal court shall not be ousted of jurisdiction till the right of tithes come in question by some plea pleaded. So, if a parson lease his parsonage, rendering rent, if he bring an action for the rent, as soon as it appears by the party's own shewing, or by some plea pleaded, that the right of tithes will come in question, (whether it be between a layman and a spiritual man, or two laymen) the temporal court shall be ousted of jurisdiction.—2 Edw. 4.

i. 42

19. Where trespass is brought against a servant who claims nothing in the tithes, the temporal court shall have jurisdiction; but if the action had been brought against a farmer of a parson, then the court shall be ousted, because the action is maintainable against a farmer in court-christian, for the same action that may be maintained against the parson shall be maintained against the farmer, and the farmer shall have the same action as the parson.—6 Edw. 4.

i. 43

20. If it appear by the pleadings, that the court has not jurisdiction, it will not hold plea, although the parties have not taken advantage of it, as in case of imparlance, after which, in common cases, a party cannot plead in abatement to the jurisdiction.—22 Edw. 4. i. 47

21. An indictment lies for forcible entry for tithes, and restitution will be granted.—6 Car. Anon. i. 372

22. Ejectment lies for tithes only.—9 Car. B. R. *Baldwin v. Wine.* i. 377

23. The court were inclined to think that tithes are extendible by *elegit*; but all held clearly that they are not due *jure divino*.—1649. B. S. *Harwood v. Paty.* i. 405

IX. *How and where to be tried*—2. *Chancery.* —See *Modus, Chancery.*

A. *Bill.*

1. A bill for tithes dismissed, where there had been a suit for the same tithes in the spiritual court, and (by prohibition) the suit had

been carried to the common law.—24 El. *Cance. Pleadall v. Goddard.* iii. 1201

2. Chancery has jurisdiction of tithes.—17 El. *Windham v. Norris.* i. 66

3. Tithes are determinable in chancery.—34 El. Canc. *Moone v. Bond.* i. 106

4. The court of chancery refused to reverse a decree for tithes upon a bill of review, in respect of a verdict at law and sentence in the spiritual court for the plaintiff (in the bill of review) since the decree.—3 Car. Canc. *Yate v. Southby.* i. 361

5. Chancery has consuance of tithes as well as the exchequer.—29 Car. 2. Canc. *Anon.* i. 515

6. If the executor of a parson bring a bill for tithes, he need not offer to accept the single value, he not being entitled by stat. Edw. 6. to the treble value.—34 Car. 2. Canc. *Anon.* i. 540

7. A suit may be instituted in a court of equity for tithes, however small in amount or value.—7 Geo. 2. Dom. Proc. *Lewis v. Griffith.* ii. 52

8. Bill by lessee of a rectory for three lives, who had made a derivative lease, for tithe in kind, and to establish a custom of setting out corn in stocks, is properly brought, though the tithes are out in lease, as such a bill prevents collusion between the lessees and occupiers.—14 Geo. 2. Canc. *The Archbishop of York v. Sir M. Stapleton.* ii. 83

9. The court of chancery will not dismiss bill for tithes, and leave plaintiff to his suit in the spiritual court or at law, unless there be a good, legal, or equitable bar.—19 Geo. 2. Canc. *Douglas v. Vane.* ii. 103

10. Bill lies for partition of great tithes; and a demurrer because they were incorporeal and indivisible, overruled.—23 & 24 Geo. 2. Canc. *Bagster v. Knollys.* ii. 122

11. Bills for quieting men in their rights and possessions against the latitude of legal controversies, and multiplicity of suits, have manifest equity dealt with a sober hand. But bills to disturb and disquiet men's possessions would be in the highest degree rigorous and oppressive. The voice of the law is *caveat emptor*; the voice of equity is *teneat emptor*, though his title be bad and defective, if he has not purchased with iniquity.—32 Geo. 2. Canc. *Fanshew v. Rotheram.* ii. 158

12. An account of tithes is consequential upon the legal right; and therefore, if the least doubt is thrown upon it by *prima facie* evidence, the account cannot be decreed till the right is established at law.

13. Bill for tithes. Answer admitting the right to one-third, and submitting to account, and claiming the other two-thirds under a title derived from a grant by queen Elizabeth, submitting to be examined upon interro-

gatories, but not setting forth a description of the lands. The defendants having gone into evidence in support of their claim, pressed to have the bill dismissed generally; the plaintiff pressed for a general account. The master of the rolls decreed an account as to one-third; and as to two-thirds, the plaintiff declining to try the right at law, dismissed the bill.—40 Geo. 3. Canc. *Forcroft v. Parris*. ii. 487

14. On a bill being filed in the exchequer for tithes, the defendant filed a cross-bill in the court of chancery, for a discovery of the plaintiff's title to the tithes, and whether he had not conveyed them away; and on demurrer it was held, that the defendant was not entitled to a discovery of the plaintiff's title to the tithes, but was entitled to a discovery whether he had conveyed them away.

15. A doubt was entertained whether a cross-bill can be filed in the court of chancery, when the original bill is in the court of exchequer; but the defendant having answered part of the bill, was considered as precluded from raising the objection.—59 Geo. 3. Canc. *Glegg v. Legh*. iii. 958

16. The vicar is a necessary party to a bill for tithes, by an impropriate rector against an occupier, when the defence made is, that the tithes in question are payable to the vicar.—1 Geo. 4. Canc. *Daws v. Benn*. iii. 1001

17. It is multifarious for a rector and a vicar to join in a suit for the tithes respectively due to them, it might have been otherwise if the plaintiffs had alleged that they, together, were entitled to all the tithes, and had prayed a general account.—1 & 2 Geo. 4. Canc. *Exeter Coll. v. Rowland*. iii. 1061

18. A general allegation of discharge is sufficient in a bill to establish an exemption from tithes for lands of a greater monastery.

19. The ordinary is a necessary party to a bill to establish such an exemption against a vicar and his successors.—1 & 2 Geo. 4. Canc. *Cook v. Butt*. iii. 1060

20. In a suit by an impropriate rector for tithes where the defence is, that the tithe in question is vicarial, and the vicar, who is a defendant, dies during the suit, it is not necessary to make the new vicar a party, if the plaintiff will waive the account subsequent to his induction.—2 Geo. 4. Canc. *Daws v. Benn*. iii. 1393*

Consolidation.

1. A reference whether several tithe causes should be consolidated, is not, of course, before answer.—50 Geo. 3. Canc. *Keighley v. Brown*. ii. 574

B. Demurrer.

1. A general demurrer holds, where the

plaintiff, entitled only to discovery, prays relief also.—45 Geo. 3. Canc. *Gordon v. Simpkinson*. ii. 540

2. Demurrer to the jurisdiction of the court of chancery in a bill for tithes overruled; and the Lord Keeper *Finck* said, that the exchequer did not hold plea by English bill till the 33 H. 8. 39.—26 Car. 2. Canc. *Anon*. i. 504

C. Plea.

1. Witnesses who have been examined in a suit for tithes in the exchequer, shall not be examined to the same points in another suit depending in chancery, in which the plaintiff had proceeded to answer and replication, before the bill in the exchequer exhibited, and a plea of such proceedings in the exchequer allowed.—26 Car. 2. Canc. *King v. Brownlow*. i. 505

2. Plea of a former suit depending, and of a decree therein for an account, allowed to a bill for tithes.—21 Geo. 2. Canc. *Bell v. Read*. ii. 110

3. Plea of simony to a bill for tithes, ordered to stand for an answer, with liberty to except, as being multifarious.

4. Leave to amend a plea is not of course, and the proposed amendments must be stated.—53 Geo. 3. Canc. *Wood v. Strickland*. ii. 674

D. Answer.

1. Where a Quaker refused to answer a bill for tithes upon oath, it was taken *pro confesso*, and the master had a commission to inquire what was due.—29 Car. 2. Canc. *Anon*. i. 515

2. Although a defendant may in equity insist on several defences, which are consistent, yet having undertaken to prove a general exemption, and failing in that, he cannot have the benefit of the other point; so the defendant was decreed to account generally.—4 Geo. 2. Scacc. *Leigh v. Maudsley*. ii. 25

E. Decree.

1. In a suit by a vicar against a parish for tithe of lead ore by prescription, four had been named to defend for the rest, and a decree had passed against them, the Lord Chancellor held that a successor of the vicar might well proceed by *scire facias* and *subpana* for the execution of the decree against a person not claiming under any party or privy to the former bill; but a commission was granted to ascertain the quantity and value of the ore, and the plaintiff's title as vicar, &c.—28 Car. 2. Canc. *Brown v. Vermuden*. i. 509

2. In a suit for tithes in the exchequer, that court does not decree payment of the tithes for the future, however plain the right; but only an account and payment of what is due at the

filing of the bill. But in the court of chancery, account and payment is directed to the time of the decree.—2 & 3 Geo. 2. Canc. *Carleton v. Brightwell*. ii. 7

3. The course of proceeding in the court of exchequer, is to decree an account of tithes to the filing of the bill; but it will be time enough when the cause comes back after trial, to search for precedents here in tithe bills; though I know the rule of this court in general is, where an account is directed, that it shall be carried down even to the time of the master's report, and not to the filing of the bill only.—14 Geo. 2. Canc. *The Archbishop of York v. Sir M. Stapleton*. ii. 83

F. Issue.

1. The right to compel an account for tithes being consequential to the legal title, and a rector having *prima facie* the title to all the tithes, it seems that in questions between the rector and the vicar, a court of equity ought not to make a decree in consequence of their opinion of the vicar's title, and in derogation of that of the rector, until the title of the vicar has been established by the decision of a jury; unless such title is made out in the most clear and satisfactory manner.

2. Where the court of exchequer decreed for the vicar without directing an issue to try his title, the House of Lords reversed the decree, and their lordships' decree was made an order of the court of exchequer, and the issue was directed to be tried by a special jury of the county of York.

The issue was accordingly tried, and the jury returned a verdict that the plaintiff, Daniel Garnons, was and is entitled by the endowment, or otherwise, to the tithe of agistment within the parish of South Cave, in manner and form as in the declaration is alleged.

The cause came on to be heard on the equity reserved, when the court ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendant for the tithe of agistment demanded by the bill, with costs at law, but the court did not think fit to give costs in equity on either side.—33 Geo. 3. Scacc. & Dom. Proc. *Garnons v. Barnard*. ii. 380

3. New trial of an issue refused, where there was not the least ground to impute any misdirection to the jury, the admission of any improper evidence, nor the rejection of any proper evidence, and where the greater and more material part of the evidence was in writing, of which the Lord Chancellor (who directed the issue) was a competent judge, and upon which there was no reason to suppose any further light could be thrown by another reference to a jury.—19

Geo. 3. Canc. *Derie v. Lord Brownlow*. ii. 318

G. Costs.

1. No instance of decree for an account of tithes without costs, unless there was a tender.—21 & 22 Geo. 2. Canc. *Stockwell v. Terry*. ii. 118

2. Length of time where the party has not lain under any disability, is a sufficient ground for the court to refuse an account.—29 Geo. 2. Canc. *Monoux v. Shish*. iii. 1314

3. Costs of a motion are given where a finding at law is confirmed.—59 Geo. 3. Canc. *White v. Lisle*. iii. 969

IX. How and where to be tried—3. Exchequer. —See *MODUS*, Exchequer.

A. Bill.

1. The exchequer took consueance of tithes in the case of the king or his farmer, though neither K. B. nor C. P. would.—38 Edw. 3. i. 17

2. Parson and vicar cannot join in one bill in the exchequer, (dub. DAVENPORT, Ch. B.) though that court has jurisdiction of tithes or a modus.—7 Car. Scacc. *Axon*. i. 374

3. A bill in the exchequer was dismissed, the plaintiff not having made proof of quantities or values, the defendant in his answer not admitting the plaintiff's title, but alleging an extinguishment of the tithes by unity of possession.—1655. Scacc. *Att. Gen. v. Straite*. i. 414

4. A bill in equity lies to be relieved against the subtraction of predial tithes, notwithstanding the statute 2 & 3 Edw. 6. c. 13. gives an action at law.—1657. Scacc. *Hele & others v. Pronte*. i. 425

5. In a cross-bill in the exchequer the plaintiffs need not entitle themselves to the jurisdiction of the court.—1659. Scacc. *Doble v. Potman*. i. 429

6. Where tithes have been seized under pretence of title, the court (of exchequer) will compel a discovery of particulars and values.—13 Car. 2. Scacc. *Cage v. Warner & Lucy*. i. 433

7. Where the lessee of a rectory alleged that a vicar (who was endowed of tithes of a part of the inclosed grounds in the parish) subtracted tithes of corn grown thereon, and the vicar denied the right, and claimed the tithes under the endowment, the court dismissed the bill and left the plaintiff to his remedy at law.—5 W. & M. Scacc. *Dewey v. Price*. i. 577

8. Upon hearing, it appeared that the bill was brought for establishing *moduses* in the parish, but each party claimed a distinct *modus* for his farm, and not any general *modus* throughout the parish; and the court dismissed the

bill without prejudice, because it is not possible to try forty-two several *moduses*, for the infinite vexation and multiplicity of them; besides they were in their nature forty-two several suits or causes.—8 W. 3. Cam. Scacc. *Portman & 42 others v. Snow*. i. 620

9. Though a defendant had mistaken the ground of his defence, yet where the court saw that the lands might be discharged in law, and no tithes had been paid, the bill was dismissed.—11 W. 3. Scacc. *Thorngate v. Wallop*. i. 636

10. The defendant standing out all process, the bill being read three times, it is taken *pro confesso*.—2 Geo. Scacc. *Panchard v. Free*. i. 724

11. Where a bill is preferred for something beneath the dignity of the court, it may be dismissed upon motion, as well as demurrer; but if there be fraud, or it be a complicated matter, the bill will be retained.—4 Geo. Scacc. *Anon*. i. 733

12. Although there can be no revivor for costs alone, yet there may be for the duty and costs.—8 Geo. Scacc. *Dodson v. Oliver*. i. 754

13. Upon a bill of revivor for the duty as well as the costs, an executor defendant shall pay costs; *aliter* when the revivor is only for the costs to be ascertained.—5 Geo. Scacc. *Sir E. Delaval v. Sir E. Blakett*. i. 748

14. In a bill of tithes by a lessee of a lay impropriator, he ought to shew in whom the fee is vested, and derive his title from thence.—8 Geo. Scacc. *Penny v. Hoper*. i. 777

15. At the sittings at Serjeants'-Inn after Mich. Term, 1722, this cause came on again, and the plaintiffs had amended their title in exhibits, by shewing a lease from the impropriator to Sir Herbert Croft; but it was objected for the defendants, that the plaintiffs had not amended their bill, and consequently had not given the defendants an opportunity of controverting the plaintiff's title; and upon this objection the cause was again put off with liberty for plaintiffs to amend. [Note in *Bunbury*.] S. C.

16. In a bill for a portion of tithes in a neighbouring parish, the vicar of that parish must be a party, as well as the impropriator.—8 Geo. Scacc. *Baily v. Werrull*. i. 778

17. In a bill to establish a custom which binds the inheritance, the owner of the inheritance must be a party.—11 Geo. Scacc. *Spendler v. Potter*. i. 802

18. Where it does not appear by bill or answer that the defendants are lessees of the crown, no objection lies for want of parties.

19. In a bill for payment of 40*l*. in lieu of tithes, it being objected that all the occupiers ought to have been parties, a commission was

issued to inquire of and ascertain the value of the lands, the owners and occupiers names, and how much each tenement ought to pay.—12 Geo. Scacc. *Cuthbert v. Westwood*. i. 815

20. On a bill for tithes, glebe, and right of common, the defendants setting up a *modus* as to the first demand, and denying the title of the plaintiff to the two latter, the court retained the bill until the plaintiff should establish his title at law; and although the plaintiff had prayed a commission as to the glebe and common; and the *modus* seemed void for rankness; the court refused to decree the tithes until the other points were settled.—1 Geo. 2. Scacc. *Sweetapple v. The Duke of Kingston*. ii. 1

21. Bill by lay impropriator for tithes; the defendants by their answer set up a title in other persons to the tithes; and those persons not being made parties to the suit, held, that the plaintiff could not proceed for want of parties.—4 Geo. 2. Scacc. *Hooper v. Lethbridge*. ii. 25

22. Bill for glebe, common and tithes. The case upon bill and answer were almost exactly the same as that of *Sweetapple v. The Duke of Kingston*, which being cited, the court was inclined to follow the same rule; but the plaintiff agreed to have his bill dismissed as to the glebe and common.—5 Geo. 2. Scacc. *Chamberlain v. Spencer*. ii. 31

23. In a bill by the vicar for small tithes, the impropriator is not a necessary party, though the occupier insists, that the tithes belong to the impropriator; for the vicar cannot succeed unless he prove his right, and the impropriator, not being a party, is not bound by any decree.—25 & 26 Geo. 2. Scacc. *Smith v. Huggins*. ii. 127

24. In a bill against an occupier for an account, it was objected at the hearing that his lessor ought to have been made a party to the suit, but the objection was overruled.—26 Geo. 2. Scacc. *Jennings v. Lettis*. ii. 137. n. 2

25. On a bill by a rector for tithes, the defendant setting up an exemption on the ground that the lands were abbey lands, and that his landlord was the lessee of the lands under a grantee from the crown; the court ordered the cause to stand over, with liberty to amend, by adding the grantee from the crown, and his lessee, as parties to the suit, without costs.—18 Geo. 3. Scacc. *White v. Friend*. iii. 1270

26. In a suit by a layman for tithes, the plaintiff need not state his title to the tithes, but merely that he is entitled to them.—18 Geo. 3. Scacc. *Lowther v. Bolton*. iii. 1271

27. On a bill for tithes of corn and hay, a defendant claiming title to a portion of the tithes, and supporting his claim by evidence of long possession and pernancy of the portion of the tithes, the court held it was not a proper

case for its interference, and would not even direct an issue, but left the plaintiff, the rector, to his remedy at law.—19 Geo. 3. Scacc. *Scott v. Airey.* ii. 342

28. Where the vicar proved fraud by the occupiers in removing their ewes out of the parish to drop their lambs, and their sheep to be shorn, but had not charged such fraud in his bill, the court refused to make any decree on the subject.—25 Geo. 3. Scacc. *Lewis v. Giffard.* iii. 1330

29. Where the right to tithes depended on a question of title, and the possession was equivocal, the court refused to make any decree, or even to direct an issue, until the right was established in a court of law; but retained the bill for a year, that the right might be so tried.—25 Geo. 3. Scacc. *Mawbey v. Edmead.* iii. 1326

30. On a bill for a composition, in the nature of a pound-rate, according to the rent of the lands, the discovery being necessary, the account is consequential.—26 Geo. 3. Scacc. *Worrall v. Nicholls.* iii. 1337

31. *Seemle*, that a bill of peace for quieting a person in the enjoyment of an exemption from tithes cannot be sustained, especially if the precise lands for which the exemption is claimed cannot be shewn. *Seemle*, that a bill of peace does not lie in respect to tithes when the question is only between individuals, and therefore not necessary to prevent multiplicity of suits, and where there has been no previous suit at law to disturb the right.—32 Geo. 3. Scacc. *Howell v. Frankis.* iii. 1370

32. Where a plea is a bar to the whole bill, if at all, an answer to any matter which ought to have been covered by the plea, overrules it.—32 Geo. 3. Scacc. *Blacket v. Langlands.* iii. 1371

33. In a bill for the single value of tithes, it is not necessary expressly to waive the treble value.—33 Geo. 3. Scacc. *Wools v. Walley.* ii. 371

34. To a bill for discovery of glebe-lands, alleged to have been confounded with lands in the possession of the defendant, an answer was put in, describing certain glebe-lands in the defendant's possession, "as appeared from a plan or map and rental or particular of the defendant's estate, among his papers:" the court held, that the defendant having made these documents part of his answer, was bound to produce them.—33 Geo. 3. Scacc. *Potts v. Adair.* iii. 1374

35. Where a bill was filed for an account of tithes against one who had a lease of his own and the other tithes in the parish, and the whole question in the cause turned upon the validity of the lease, and of the notice given to determine it, the court would not proceed till those points were settled at law.—34 Geo. 3. Scacc. *Bousher v. Morgan* ii. 408

36. Where the right to tithes of particular lands was claimed by the rectors of two different parishes, one of such rectors claiming a *modus* in lieu of the tithes, and the other claiming tithes in kind, it was holden that a bill of interpleader would not lie.—37 Geo. 3. Scacc. *Wollaston v. Wright.* ii. 435

37. An impropriator is not a necessary party to a bill by a vicar against occupiers; and if made a defendant, he may demur.—59 Geo. 3. Scacc. *Williamson v. Lord Lonsdale.* iii. 876

38. It is most material in equity pleading, that all the evidence intended to be relied on at the hearing should be founded on some allegation distinctly put on the record of the fact which it is calculated to support, or otherwise it will not be admitted on the hearing. Thus, proof of a declaration by the defendant that "he would endeavour to prevent the tithe-owners from getting their tithes," was rejected wholly because the plaintiff had not, in his bill, charged such declaration to have been made by the defendant.—59 Geo. 3. Scacc. *Hall v. Maltby.* iii. 928

39. An impropriator, who, not being an occupier, is made a party to a bill for tithes, is not liable to costs on a decree in favour of the plaintiff generally: nor is he in a case where, in consequence of the occupiers having set up a defence of payment of some of the tithes demanded, to the impropriator, he also is therefore made a party defendant by amendment, and he asserts upon the record his title to receive the tithes so alleged to have been paid to him.

40. Although it may be sometimes proper to bring the impropriate rector before the court, yet it must be at the peril of paying him his costs.

41. If, however, a party so improperly made a defendant, put the plaintiff to unnecessary expense, the court will order him to pay costs.—60 Geo. 3. Scacc. *Petch v. Dalton.* iii. 924

42. The application by plaintiff to be at liberty to withdraw his replication filed, and amend the bill, is not a motion of course. It cannot be made in this court, without an affidavit shewing the nature and materiality of the proposed amendment.

43. Amendment by striking out of the bill certain tithes to which the plaintiff was stated to be entitled, but of which no account was prayed, allowed.—1 & 2 Geo. 4. Scacc. *Markham v. Smythe, Bart.* iii. 1044

44. A vicar, demanding certain specific tithes by his bill *nominatim*, is not precluded from giving evidence of other tithes due to him for other titheable matters taken by the defendants, where there is in the bill a general claim of all other tithes usually denominated small tithes.—1 & 2 Geo. 4. Scacc. *Manby v. Lodge.* iii. 1052

45. Where the following memorandum of agreement was made, "The governors of Lucton School to let to Mr. Philip Pymble the tithes of Yarpole and Bircher at 250*l.* a-year, and the tithes of Lucton at 180*l.* a-year, for three years from Christmas next, payable half-yearly, &c. 8th November, 1820. Thomas Colman, agent to the Governors; Philip Pymble; witness, Edward Smith;" and the governors filed a bill in Michaelmas term, 1821, against the occupiers of lands comprised in the agreement, for an account of the tithes of all titheable matters taken from off their farms from the 25th December, 1820, to which Pymble was not made a party; some of the tithes having been paid to him, some to another person, and the title of the plaintiffs to demand the residue disputed: a motion on the part of the plaintiffs to amend their bill, by making Pymble a co-plaintiff, and otherwise as they should be advised, upon payment of the costs incurred by the defendants by reason of the amendments, or upon payment of such costs as the court should deem proper, was refused with costs. (GRAHAM, B. doubting.) 4 & 5 Geo. 4. *Governors of Lucton School v. Smith.* iii. 1117

46. Bill, praying an account of tithes, and merely stating that the impropriate rector "demised" the tithes to the plaintiff, demurred to for want of title. On argument, the demurrer was allowed, but the plaintiff was permitted to amend, by adding the impropriate rector, on payment of 5*l.* costs—4 & 5 Geo. 4. *Jackson v. Benson.* iii. 1121

Consolidation.

1. On an application to consolidate tithe suits, an affidavit that the defendants do not defend by subscription, is required.—31 Geo. 3. Scacc. *Pyke v. Brock.* iii. 1367

2. Tithe causes cannot be consolidated in a court of equity.—59 Geo. 3. Scacc. *Forman v. Blake.* iii. 981

3. After a decree had been obtained by the plaintiff in a suit for tithes, of which he was lessee, and whilst an appeal from the judgment was pending in the House of Lords, the assignees of the plaintiff, who had in the meantime become bankrupt, filed six different bills against six different defendants to the former suit, for an account of tithes: the court refused a motion to consolidate the causes: nor would they order that the proceedings in all the suits but one should be stayed, that all might be determined by the decision in that one case.—1 Geo. 4. Scacc. *Forman and others, Assignees, v. Southwood and others.* iii. 1004

B. Injunction.

1. Injunction granted to a bishop's court in

a suit for tithes, until answer.—5 Geo. Scacc. *Abthorp v. Jennings.* i. 739

2. The common injunction to stay proceedings at law does not extend to suits in the ecclesiastical court for tithes; but a special application for such an injunction is necessary. And therefore where such an injunction had been obtained on a motion of course, the order was discharged with costs.—54 Geo. 3. Scacc. *Reed v. Bowyer.* ii. 700

3. It is not a ground for an application to a court of equity to restrain a plaintiff in a suit by bill in that court for tithes, from proceeding in actions brought by him against parishioners, not parties to that suit, for not setting out their tithes; that the court has decreed an issue, to try the validity of (parochial) moduses, laid in the answers as covering the articles, in respect of the tithes of which the actions at law had been commenced.

Nor does the fact of the applying parties having entered into a bond (on summons under 7 & 8 W. 3. s. 8.) to pay all costs of suits and actions relating to such tithes, so connect them with the suit in equity, as to entitle them to the interference of the court.—1 & 2 Geo. 4. Scacc. *Taylor v. Cook and Radford.* iii. 1045

4. During the pendency of a suit for an account, and payment of tithes, the court will not restrain the defendant therein from proceeding in an action at law to recover damages against the plaintiff, for not taking and carrying away the tithes in question from off the defendant's lands.—4 & 5 Geo. 4. Scacc. *Bradley v. Bensted.* iii. 1125

C. Demurrer.

1. A demurrer to a bill for tithes in the exchequer, because the single value only was not demanded, overruled. *Quod nota et quare*, because it is contrary to the common usage and practice.—13 Car. 2. Scacc. *Driver v. Man.* i. 434

2. A bill against several person concerning things of several distinct natures, is bad upon demurrer: as if a parson should prefer a bill against several persons, against some for tithes, and others for glebe, it would be bad: but for tithes only, it is good against several parishioners, because they are of the same nature.—15 Car. 2. Scacc. *Berke v. Harris and others.* i. 439

3. Where in a suit for tithes the title to the rectory is in issue, to a cross-bill praying a discovery of the title, the rector cannot demur, although no other title is set up.—32 Geo. 3. Scacc. *Bowman v. Lygon.* ii. 366

4. Bill against eight defendants for tithes, and against four of them as commissioners to

set out glebe lands alleged by the bill to be occupied by the other defendants, who had confused boundaries.

5. Demurrer to the whole bill by the four defendants who were not charged with the possession of the glebe land, on the ground of multifariousness, held good.

6. A demurrer for multifariousness need not be supported by an answer denying combination, the old cases being overruled.—32 Geo. 3. Scacc. *Potts v. Durant*. iii. 1371

7. Bill for tithes, praying discovery whether the defendants had not associated together in their defence; a demurrer to the discovery was allowed, on the ground that the combination amounted to maintenance, and was either criminal or not; if the former, the discovery could not be granted, as it would subject the defendants to a penalty; and if the latter, the discovery was useless.—33 Geo. 3. Scacc. *Oliver v. Haywood*. ii. 371

8. On a demise from year to year of lands tithe-free, with a privilege for the tenant to take the way-going crop, the lessee of the tithes afterwards demanding tithes of the way-going crop, and suing in the spiritual court for the same, the tenant is entitled to be exonerated by his landlord, and a demurrer for want of equity to a bill filed for that purpose was overruled.—34 Geo. 3. Scacc. *Dryden v. Robinson*. iii. 1374

9. Where an impropriator had filed a bill for tithes, and the defendant filed a cross-bill for a discovery of the impropriator's title, and of divers deeds, &c. alleged to be in his possession destructive of such title, to which the impropriator filed a general demurrer; the court held, that as the cross-bill required an answer to other matters, especially whether there was not a certain modus, the demurrer must on that account be overruled: but ultimately permitted the demurrer to be withdrawn, and a special demurrer and answer to be filed, on payment of full costs as between party and party. A demurrer accordingly filed, limited to such parts of the bill as sought a discovery of the deeds, &c. was, on argument, overruled; the court holding, that the plaintiff in the cross-suit was entitled to avail himself of any instrument in the possession of the defendant, which would shew that he had the right, or that the defendant in the cross-suit had none.—58 Geo. 3. Scacc. *Whyman v. Legh*. iii. 916

D. Plea.

1. *Quære*, whether alienage be a good plea to a bill for tithes.—3 W. & M. Scacc. *Pettit v. Churley*. i. 569

2. To a suit in the exchequer, the defendants

pleaded a suit and decree in the court of chancery on the same subject; and it appearing the matter was settled in chancery, bill dismissed.—2 Ann. Scacc. *Godfrey v. Trinder*. i. 657

3. Where non-residence is pleaded in bar to a bill for tithes, the plaintiff is not entitled to a discovery, for the defendant having shewed that the plaintiff has no title to the tithes themselves, he in consequence can have no title to a discovery concerning them, and HALE said, that no construction would be too liberal to make parsons reside, and take care of their parishes.—7 Geo. Scacc. *Quilter v. Mussendine*. i. 816

4. Where non-residence is pleaded to a bill for tithes, quantities and values need not be discovered.—13 Geo. Scacc. *Bokenham v. Bentfield*. i. 828

5. A plea of non-residence to a bill for tithes by the lessee of a rectory allowed.—11 Geo. Scacc. *Mills v. Etheridge*. i. 806

6. The statute of limitations is not pleadable to a bill for tithes, for the defendant is in the nature of a bailiff or receiver for the plaintiff.—11 Gen. Scacc. *Marston v. Cleypole*. i. 812

7. A plea of title to tithes, stating a grant from King Hen. 8. and that by divers mesne conveyances and assurances in the law they became vested in the defendant, was held sufficient without setting out the conveyances.—29 Geo. 3. Scacc. *Burslem v. Burbage*. iii. 1361

8. A decree in a former suit by which a bill for tithes was dismissed, cannot be pleaded in bar to a bill for tithes accrued subsequently to the decree.—50 Geo. 3. Scacc. *Minor Canons of St. Paul v. Crickett*. ii. 581

9. In a plea of payment of an annual composition to a bill for tithes, it is not necessary to set out the time when or place where the agreement for the composition was made. No venue nor time is necessary in equity pleading.—51 Geo. 3. Scacc. *Mytton v. Harris*. ii. 602

10. To a bill against an occupier for an account of tithes arising from farms and lands, situate within the township of K. in the parish of L. since a time stated in the bill, a plea, that the defendant was not at the time stated in the bill, nor had since been, nor was then, in the occupation of any farm or lands within the parish of L. or the titheable places thereof, allowed, though merely a negative plea.—60 Geo. 3. Scacc. *Warrington v. Mothersill*. iii. 981

E. Answer.

1. Where an exemption is insisted upon (as by a denial of custom to pay tithes of conies, which are not due of common right) the defendant in his answer need not set out quantities and values; for there being a full answer given

to the thing in demand, till that be tried the defendant is not bound to discover; and if it should be otherwise, the defendant, by a feigned suggestion, might be forced to discover any thing; but if in such case the matters be found against the defendant, he shall be examined afterwards upon interrogatories.—13 Car. 2. Scacc. *Randal v. Head and others.* i. 434

2. If a defendant refuse to appear and answer, the bill shall be taken *pro confesso*, and on the plaintiff making oath of the value, the payment of the tithes be decreed, but according to *Bunb.* this was by consent.—4 Jac. 2. Scacc. *Crossman v. Goodridge.* i. 554

3. The quantities and values of tithes must be set forth particularly in an answer.—8 Geo. Scacc. *Baker v. Planner and others.* i. 777

4. According to the practice of the court a plaintiff is of common right entitled to a discovery of quantities and values, whatever exemption or discharge a defendant may have.—11 Geo. Scacc. *Mills v. Etheridge.* i. 806

5. Answer permitted to be amended, by altering the number of acres of which the defendant's farm was stated to consist, on the terms of paying all costs since the answer, swearing the answer over again, and taking out a new commission at the defendant's expense.—1 Geo. 2. Scacc. *Berney v. Chambers.* iii. 1236

6. A defendant stating that there were several lands in the parish exempt from tithes, and that there were other lands whereof the rector was only entitled to a moiety of the tithes, and alleging a modus in lieu of tithe hay, except in the lands which were tithe-free, and those for which a moiety of the tithes was payable, held that he was not bound to set forth particularly the lands which he alleged were tithe-free, or paid a moiety of tithes.—30 Geo. 2. Scacc. *Gills v. Horrex.* ii. 151

7. *Semble*, that where an answer sets up an exemption from tithes, the value and quality of the tithes need not be stated: but it is otherwise where a modus is alleged.—16 Geo. 3. Scacc. *Jones v. Pawlett.* iii. 1268

8. The answer to a bill for an account of tithes having insisted upon what was equivalent to a prescription *in non decimando*, the defendant's evidence going to the same point, the court would not permit the evidence to be read to support a different defence, viz. a presumption that the tithes had been granted to the owner.—30 Geo. 3. Scacc. *Nash v. Thorn.* ii. 358

9. A defendant, by answer, setting up several inconsistent and contradictory defences to a bill for tithes, the court doubted whether this should not be considered as an abuse of pleadings, and be rejected as an improper defence, tending to distract and mislead the plaintiff by its multifariousness. But it ap-

pearing that the defendant had not been guilty of any intentional misconduct, and that it arose from the mistake of his legal advisers, the court went into the defence.—36 Geo. 3. Scacc. *Nagle v. Edwards.* ii. 427

10. The answer to a cross bill was not allowed to be read by the party who put it in in his own favour, though the original bill and answer were read, there having been no further proceedings on the cross-bill and answer.—51 Geo. 3. Scacc. *Bennett v. Neale.* ii. 630

11. Admissions in an answer may be read, to prove the occupation by the defendant of lands of which he was in possession at the filing of the bill, but not of lands taken and occupied by the defendant after the filing of the bill and before the answer.—58 Geo. 3. Scacc. *Rumney v. Beale.* iii. 865

12. Where a defendant, in his answer, had inaccurately stated his title to tithes claimed by him in opposition to the rector, but it appeared that such title was likely to be satisfactorily established, the court permitted the defendant to go into evidence to prove his right to the tithes.—58 Geo. 3. Scacc. *Wilmot v. Hellaby.* iii. 887

13. The court will not grant a defendant, in a suit for tithes, who has filed a cross-bill against the plaintiff for a discovery, time to answer the original bill, until after an answer shall have been put in to the cross-bill. The course is to amend the answer if it should be found necessary.—3 Geo. 4. Scacc. *Dolben v. Whittington.* iii. 1071

14. A vicar is compellable to produce vicar's books, charged in a cross-bill for discovery by a defendant in an original suit for tithes, to furnish evidence of a composition, and admitted in the answer to contain entries relating thereto. HULLOCK, B. dissenting. The costs of the application are to be paid by the party making it. *Semble*, that vicar's books are of both a public and private nature. A motion may, to save time and expense, pray two distinct things which are not incompatible.—4 & 5 Geo. 4. Scacc. *Firkins v. Lowe.* iii. 1122

F. Replication.

1. *Quære*, Whether notice of abridgment of a plaintiff's demand upon the commission be as well as if abridged by the replication.—4 Geo. Scacc. *Anon.* i. 736

G. Interrogatories.

1. Interrogatories may be referred as leading, after publication passed, and the cause set down; and they may be objected to at the

hearing.—26 Geo. 3. Scacc. *Delve v. Lord Bagot*. iii. 1331

H. Depositions.

1. A witness ordered to attend in the exchequer, to explain his deposition to an interrogatory, and sworn and examined.—8 W. 3. Scacc. *Fifield v. Squire*. i. 623

2. Depositions ordered to be suppressed at the hearing.—5 Geo. Scacc. *Jones v. Cawthorne*. i. 739

I. Publication.

1. Publication of old depositions refused to be granted, though it was insisted that the plaintiff, by referring to them in a new bill, had in effect revived the suit.—6 Geo. Scacc. *Johns v. Stafford*. i. 750

2. A third application to enlarge publication granted; but the cause to stand in the paper, as if publication had passed, to prevent a delay in the hearing.—4 & 5 Geo. 4. Scacc. *Firkins v. Lowe*. iii. 1122

K. Decree.

1. A bill was exhibited in the Exchequer for predial and other tithes, against the defendant who did not appear to hear judgment; upon proof of the quantities and values the whole were decreed, the single value only being demanded.—1655. Scacc. *Hardwicke v. Newre*. i. 413

2. Tithes decreed in the exchequer for the future.—1655. Scacc. *Kirkby v. Redhead* and others. i. 414

3. Where tithes were not claimed for lands which had been disparked till 20 or 25 years after the disparking, the court would only decree tithes for four years.—8 Ann. Cam. Scacc. *Lloyd v. Green*. i. 684

4. The court of exchequer refused to decree tithes of cherries grown in orchards and coriander seed, but left the vicar to his remedy in the spiritual court, if he could make the same to appear due to him.—19 Car. 2. Scacc. *Tabor v. Barker*. i. 457

5. A decree is never *nisi* when the cause comes on, upon the equity reserved, after the *postea* returned, but always absolute.—5 Geo. Scacc. *Geale v. Winter*. i. 743

6. In the exchequer all the enrolment is the entry. There can be no *subpœna scire facias* until the decree be entered.—8 Geo. Scacc. *Dodson v. Oliver*. i. 754

7. In a suit for tithes in the exchequer, that court does not decree payment of tithes for the future, however plain the right; but only an account and payment of what is due at the filing of the bill.—2 & 3 Geo. 2. Canc. *Carleton v. Brightwell*. ii. 7

8. Where a demand is founded on a custom, an account will not be decreed until the custom is established.—7 Geo. 2. Scacc. *Beaver v. Spratley*. ii. 59

9. The course of proceeding in the court of exchequer is to decree an account of tithes to the filing of the bill.—14 Geo. 2. Canc. The Archbishop of York v. Sir M. Stapleton. ii. 83

10. It is sufficient in an answer if it give the plaintiff notice of the general nature of the case to be made against him.

11. A trivial incorrectness in setting out the tithe of wool, and for which amends had been tendered, and the non-payment of Easter dues, which were never demanded, are not sufficient to prevent a bill from being dismissed.—35 Geo. 3. Scacc. *Baker v. Athill*. ii. 415

12. The court will not dismiss the bill of a vicar, who claims by it tithes throughout a whole parish, and only proves his claim in part of it; not even if the issues directed as to the parts wherein he has not made out his title, should be found against him on the trial. But, *semble*, the court will not give him costs, where he seeks tithes generally, and recovers only in part.—56 Geo. 3. Scacc. *Byam v. Booth*. iii. 716

13. The court will not make a decree in favour of a rector claiming tithes in kind of lands in another parish, for which he has for many years received a money payment by way of composition; nor will the court grant a commission to ascertain the boundaries of such lands, without a previous inquiry by a trial at law or an issue, whether the plaintiff is entitled to any, and what tithes on such lands. A former decree in favour of a preceding rector, and a verdict obtained by him on an issue under it, will not preclude the necessity of a new trial at law, if, ever since that decree and verdict, the succeeding rectors have neglected to take advantage of the result of the former suit, and received the same composition as was paid before that decree and verdict.—57 Geo. 3. Scacc. *Sanders v. Longden*. iii. 825

L. Re-hearing.

1. When a cause has been set down for re-hearing, the court will, on motion, give liberty to exhibit interrogatories to prove exhibits not before the court on the original hearing, on an affidavit that they have come to the plaintiff's knowledge since; and that he did not know of their existence at the time when the cause was heard.—1 & 2 Geo. 4. Scacc. *Williamson v. Hutton*. iii. 1049

M. Commission.

1. A commission to settle the boundaries of

a manor, or of a parish, ought not to be granted by a court of equity, where the interests of all parties who may probably be concerned are not before the court.—34 Geo. 3. Scacc. *Atkins v. Hatton*. ii. 403

2. A commission to settle boundaries of a parish, for the purpose of tithing, cannot be granted.—37 Geo. 3. Scacc. *Wollaston v. Wright*. ii. 435

N. Account.

1. Where the deputy reported upon the examination of witnesses, who swore that they knew the lands, which were worth so much, and that they believed the tithes were worth 2s. in the pound, without specifying any particulars; the court confirmed the report upon exception by the defendant. *Quod mirum*.—5 W. & M. Cam. Scacc. *Watts v. Watkins*. i. 578

2. Where the bill is taken *pro confesso*, the court will only give a rule to shew cause why the plaintiff should not swear to the value.—4 Geo. Scacc. *Baily v. Peasley*. i. 739

3. A defendant by answer admitting tithes to be due; but alleging, that other accounts were subsisting between him and the plaintiff, in respect of which a balance was due to the defendant, a general account between the parties was decreed to be taken.—13 Geo. 2. Scacc. *Gratwick v. Uttermare*. ii. 81

4. Account of tithes confined to six years before the filing of the bill.—13 Geo. 3. Scacc. *Garrard v. Schollar*. ii. 282

5. If a vicar claiming an account of tithes throughout a whole parish, by bill in equity, prove his right in part of the parish only, the objection that the claim is too largely laid, is not a ground for dismissing the bill.—Wood, B. *dissentiente*.—59 Geo. 3. Scacc. *Scott v. Lawson*. iii. 967

O. Issue.

1. After trial of a *modus* upon an issue directed by the court of exchequer *ad informandam conscientiam* in the proper county, and found against the plaintiff, a trial at bar (applied for upon the ground that he was a counsellor at law) was refused, as was a trial in an adjoining county, the matter being local.—13 Car. 2. Scacc. *Sir W. Waller and wife v. Farmor*. i. 435

2. Issue directed to try a custom, though no proof of it made, as laid in the bill.—5 Geo. Scacc. *Earl of Scarborough v. Hunter*. i. 747

3. Where the question of right in a suit commenced in a court of equity, is a mere legal question, the court does right in sending it to law to be tried upon a proper issue, even though the whole of the evidence is written evidence, and the question depends upon the

construction of that evidence.—12 Geo. 3. Scacc. & Dom. Proc. *Sawrey v. Collins*. ii. 264

4. Where the judge before whom an issue is tried expresses his dissatisfaction with the verdict, it is a good ground for granting a new trial.—13 Geo. 3. Scacc. *Bree v. Chaplin*. ii. 270

5. A rector is entitled to an issue as matter of right, in cases where he sues only. A rector ought not to be made a defendant in a vicar's suit for an account of small tithes charged to be withheld by occupiers.—57 Geo. 3. Scacc. *Williams v. Price*. iii. 828

6. Where a defendant sets up a title in himself to tithes demanded by the rector, and establishes his title to the satisfaction of the court, an issue will not be granted to the rector.—58 Geo. 3. Scacc. *Wilmot v. Hellaby*. iii. 887

7. The evidence, whether tithes of fruit were fairly or unfairly set out, being extremely contradictory, the court directed an issue, and considering that some difficulty might arise if the issue extended over a long period of time, limited it to the setting out of the tithes during two months.—19 Geo. 3. Scacc. *Evans v. Green*. - iii. 1283

8. It appearing from an indorsement on the *postea*, that the judge who tried an issue, considered the inference to be one of law and not of fact; and that he, therefore, could not have directed the jury that it was their province to draw the conclusion of fact, which they ought to have done, a new trial was granted.—20 Geo. 3. Scacc. *Twells v. Welby*. iii. 1286

9. Where a title to tithes in a layman is clearly made out, though not supported by possession, the court will decree an account without an issue.—35 Geo. 3. Scacc. *Lygon v. Strutt*. ii. 421

10. Other money payments put in evidence by a vicar than those set up by the occupier, cannot be considered *moduses*, unless he also shew by the evidence that such payments have the requisites of *moduses* in point of fact, as that they are of immemorial origin, and invariable amount. There is otherwise no ground for saying that the defendants are entitled to have an issue to try them.—57 Geo. 3. Scacc. *Leathes v. Newitt*. iii. 841

11. Where the court were of opinion that the effect of certain ancient documents, produced to negative the rector's common law right in favour of the vicar, were of so unusual a description that no reasoning by analogy to former decisions could lead to any conclusion as to their effect as evidence, but that they had obscured the *prima facie* right of the rector, the court directed an issue to put the case in a course of further inquiry.

12. An issue will not be granted to try part

of a custom.—57 Geo. 3. *Leathes v. Newitt.*

iii. 841

13. *Semble* that a vicar is not entitled to issues as of course.—59 Geo. 3. Scacc. *Petch v. Dalton.*

iii. 924

14. A verdict will not be entered for either party, founded on an apparent inconsistency in the terms of it, in the case of an issue directed by the court to try a fact; because it would be useless, considering the object of such trial; and the court, in the ultimate disposal of the subject matter of the suit, may correct any such inconsistency if there be occasion.—

1 & 2 Geo. 4. Scacc. *Robinson v. Williamson.*

iii. 1038

15. On a mis-trial of an issue directed by a court of equity, there can be no motion in arrest of judgment; such a motion being incompatible with the nature and object of the trial of issues in aid of a court of equity.—

3 Geo. 4. Scacc. *Moseley v. Davies.*

iii. 1082

16. Where, in a suit for tithes, the question depends entirely on the construction of ancient documents, the judge in equity is more competent to draw the proper conclusion than a jury, and in such case an issue will not be directed.—6 Geo. 4. Scacc. *Fisher v. Lord Graves.*

iii. 1180

17. Where the case depends on inference, to be drawn from comparison of conflicting testimony, the court is not in the habit of drawing such inference without a reference to a jury as the proper tribunal; and, therefore, where the situation and character of a plaintiff, in a suit for tithes claiming to be vicar, and his right to the tithes were extremely equivocal, and only to be ascertained by inference to be drawn from comparison of contradictory evidence; the court directed issues to try—1st, whether the plaintiff was vicar; 2dly, whether he was entitled to small tithes; and 3dly, whether an alleged payment was, or was not, a *modus*.—6 Geo. 4. Scacc. *Stokes v. Edmeades.*

iii. 1191

P. Costs.

1. Where the defendant had only six calves, the tithe whereof was only a halfpenny for each calf, which he had tendered, the court declared the bill to be vexatious, and ordered good costs for the unjust vexation.—7 W. 3. Scacc. *Bevan v. Williams.*

i. 613

2. Where two defendants put in several answers but joined interrogatories and examinations, the court would not separate the costs, though they were several causes and different duties decreed. *Quare*.—9 W. 3. Scacc. *Poole & Draper v. Osborne.*

i. 627

3. To a bill by the rector of Shenfield, in Essex, for tithes in kind, the defendant says he is a poor labourer, who inhabits a cottage on a

common near Brentwood, in the parish of Southweale, and has two ewes and a sow, which run on the common; and denied having any land in Shenfield; the bill dismissed with full costs.—3 Ann. Scacc. *Danvers v. Wood.*

i. 660

4. Where two defendants were sued for tithes, and one made default, and a decree passed against the other with the whole costs, he was left to get his contribution from the other as he could. *Quare*.—10 Geo. Scacc. *Lloyd v. Mackworth.*

i. 792

5. Where a bill is dismissed for want of parties, such cause not having been expressly assigned as cause of demurrer, it shall be without costs.—10 Geo. Scacc. *Bishop of London v. Nicholls.*

i. 793

6. Costs given to the plaintiff generally, notwithstanding he by his bill claimed thirteen different sorts of tithes, but only proved one sort to be due, and did not, by his replication, abridge his demand.—7 Geo. 2. Scacc. *Smith v. Morgan.*

ii. 58

7. A plaintiff, bringing two bills for tithes, where the matters in dispute might have been decided in one suit, and failing, was decreed to pay the costs of both suits.—17 Geo. 3. Scacc. *Caley v. Williamson.*

iii. 1268

8. Where the lessee of an impropiator filed his bill against the occupiers and the vicar claiming to be entitled to tithes, as well great as small; and from the evidence, it appeared, that no great tithes were due, and that there was not any foundation for his claim to the small tithes, and that he had full knowledge of his want of title, the evidence being within his reach, the court dismissed the bill with costs.—19 Geo. 3. Scacc. *Calmell v. Giffard.*

iii. 1284

9. Where there are several issues directed, and some are found for the plaintiff and others for the defendant, each party will be allowed costs on the issues found in his favour and must pay them where the issues are found against him.—56 Geo. 3. Scacc. *Prevost v. Bennett.*

iii. 726

10. A vicar claiming from occupiers great tithes, having by his bill made the rector a party defendant and his lessees and their sub-lessee, the rector and his lessees not only insisted on their title, but examined witnesses, and the court decreed an account of certain tithes against the occupiers, and issues to try *moduses*, and whether the great tithes in question belonged to the rector or vicar. The rector accepted the last issue, and went to trial. The plaintiff (in equity) failed in the issues on the *moduses* with the occupiers, and succeeded on the issue tried with the rector as to the great tithes claimed. The cause coming on to be heard on the *postea* for further directions, it was ordered that the plaintiff (in

equity) should pay the defendants the costs of the issue, in which he failed; and that the defendants the rector and his lessees should pay the plaintiff (in equity) the costs arising from the interrogatories and depositions and otherwise occasioned by the commissions issued by the rector for the examination of witnesses, to be taxed, &c. and the costs of the issue at law, and the subsequent proceedings thereon. The lessees were decreed also to pay the plaintiff the costs incurred by the plaintiff in the executing a commission for the examination of witnesses on their part; for although it might have been necessary to make the rector a party, if he had only insisted on his title by his answer, examining no witnesses and not accepting the issue, (which he was not bound to accept,) nor taking any other step, he might not have been liable to costs on the plaintiff's succeeding; but, having become active when he should have been passive, he made himself liable. So also his lessees. The sub-lessee not having examined witnesses, nor taken any step to put the plaintiff to unnecessary additional expense, his costs were ordered to be paid to him.

11. This court never directs costs ordered to be paid, to be taxed as between attorney and client.—57 Geo. 3. Scacc. *Leathes v. Newitt*. iii. 841

12. Where a decree with costs generally had been made against several defendants in a suit for tithes, and all of them, except one, died before payment, the court refused to apportion the costs, so as to relieve the surviving defendant from paying the whole of the costs.—58 Geo. 3. Scacc. *Michel v. Bullen*. iii. 915

13. Where a defendant in a tithe cause examines many witnesses, whose testimony is inadmissible, the court will give the plaintiff his costs of the rejected depositions, without reference to the result of the cause.—59 Geo. 3. Scacc. *Petch v. Dalton*. iii. 924

14. An issue directed as to a money-payment, in respect of an ancient composition. A land-owner, not being an occupier, made defendant, is entitled to have the bill dismissed as against him, with costs; but if he mixes in the defence, and examines witnesses, although the bill must be dismissed as against him, he will not be entitled to costs.—3 Geo. 4. Scacc. *Markham v. Smyth, Bart.* iii. 1071

X. How and by what words passed.—See AGREEMENT, GRANT, LEASE.

1. A sale of tithes, though not in esse at the time of sale, is good. There is no difference between a lease or grant and a sale, which is a grant in itself, and thereby a property and

possession are vested in the vendee immediately.—21 Hen. 6. i. 34

2. CHORKE said a parson might lease his tithes without deed.—9 Edw. 4. i. 45

3. The severance of tithes must be by the owner, for if a stranger sever them the parson cannot take them.—12 Edw. 4. i. 46

4. Instantly upon claim the property of tithes vests, and the possession also, although not carried.—22 Edw. 4. i. 47

5. If the tenth part of corn be severed for tithes, the parson shall have an action of trespass before any seizure, because the thing is certain by the severance of the tenth part.—E. 7 El. C. P. *Graysbrook v. Fox*. i. 47

6. Recoveries may be had, and conveyances made in temporal courts, of tithes, as of lands.

7. Judgments given, and fines levied in the King's courts, of tithes, shall be of like force as of lands.—32 Hen. 8. c. 7. § 7. iv. 51

8. By a grant of tithes without deed nothing passes.—26 El. B. R. *Withy v. Saunders*. i. 85

9. A portion is a thing in gross by itself, and cannot pass by that which is intended *nomen collectivum* as a rectory is.—27 El. B. R. *Futter v. Borome*. i. 86

10. One grants *situm rectoriae cum decimis eidem pertinentibus, habendum situm praedictum cum suis pertinentiis*; held that tithes are parcel of the rectory, and therefore for the nearness betwixt them, viz. the tithes and the rectory, the tithes pass together with the site of the rectory.—28 El. *Cary's case*. i. 89

11. A grant by a parson to one to hold his lands discharged of tithes without deed, is not good as a lease of his tithes; but if the parson sue against such grant, an action on the case lies.—28 El. B. R. *Wellock's case*. i. 89

12. Where the lessee of a rectory agreed with a farmer that for ten pounds per annum during the term for his tithes, the farmer should hold his land without tithes, and without any suit for the same. *Gawdy* held, that it was a good discharge of the tithes for the time, and a good composition to have a prohibition upon, and not like a covenant.—31 El. B. R. *Chapman v. Hurst*. i. 98

13. A parson leased his glebe for 99 years, with the profits and commodities thereto belonging, rendering a certain rent for all exactions and demands whatsoever, to the rectory therefore belonging: and the question being, whether the lessee should have the close discharged of tithes, it was resolved by the court, that the tithes should not pass by such general words, especially as the rent was but 13s. 4d. for 24 acres of land, it could not be intended that it was reserved for the tithes.—31 El. B. R. *Parkins v. Hinde*. i. 98

14. A parson agreed by parol with one P.

that he and his assigns, in consideration of a sum, should hold his land discharged during the life of the parson. It was held, that the agreement being by parol only without writing it only amounted to a cause of action for P., not for his lessees, and that it did not amount to a release of tithes, for as they cannot be leased without deed, so they cannot be released or discharged without deed. But a sale for that year in which the discharge is made, is good without deed, because the parson has for that year, as it were, an interest; and if for years it had been good; and it was said to be, in this case, no contract, but a promise, for no tithes were granted.—32 El. B. *Bagg v. Nelson & Woodward.* i. 99

15. A portion of tithes will pass by the word hereditaments.—36 El. B. R. *Hungerford v. Howland.* i. 108

16. General words shall not discharge lands of tithes, for they are not issuing out of land, but are things distinct from the land.—38 El. B. R. *Green v. Balser* or the Archbishop of *Canterbury's case.* i. 113

17. *Hobart* thought that if a man devise his rectory except his own tithes, and afterwards grant his land, the grantee should not be discharged, because they were in the grantor by way of retainer.—41 El. B. R. *Champion v. Wright.* i. 147

18. *Dodderidge* held that tithes could not be demised by copy of court roll, for although tithes had been immemorially to be paid, yet one parson could not claim them more than any other, until the council of *Lateran*; and so their origin as to a church was by constitution, and not by custom; but *Gawdy* doubted, and thought it well enough if it had been so used from time whereof, &c.—43 El. B. R. *Sands v. Drury.* i. 152

19. A bishop by indenture demised his tithes for three lives, rendering the ancient rent, and it was held that it was void against his successor, there being nothing let but tithes, which lie in *prender*, nor any place where a distress might be taken, nor any remedy if the rent should be denied, being a freehold.—3 Jac. B. R. *Talentine v. Denton.* i. 162

20. An agreement to be discharged of tithes may be by *parol* for a year; it being *quasi* by way of sale; but for the parson's life or years, which sound in nature of a lease, it cannot be without deed. An agreement to retain is good by *parol* for years but not for life, and such an interest cannot be assigned, for there is but a personal privity of contract, which does not extend to a stranger.—4 Jac. B. R. *Hawkes v. Brayfield.* i. 165

21. It was agreed in K. B. and has many times been ruled, that if a man sell his tithes

for years by word it is good, but if the parson agree that one shall have his tithes for seven years it is not good, because by *FLEMING, C. J.* it amounts to a lease, and he held strongly that tithes cannot be leased for years without deed.—5 Jac. B. R. *Anon.* i. 168

22. An agreement to retain one's tithes for seven years is good without deed, otherwise if for life, and so it has been often adjudged.—5 Jac. B. R. *Tanner v. Small.* i. 170

23. A lease of tithes for life, being a freehold, cannot commence in futuro.—6 Jac. B. R. *Edmonds v. Booth.* i. 173

24. A man had a rectory inappropriate, consisting of glebe and tithes, and by deed granted the rectory and all lands and tithes; no livery being made, it was in question, whether tithes which may pass without livery passed by this grant: held, that by livery of the charter, the tithes did not pass as in gross, for the intention of the parties was to pass the entire rectory by feoffment, and not to pass the tithes by the same, and so to dismember the rectory by fractions, and that by construction of law against the intention of the parties.—8 Jac. C. B. *Robert's case.* i. 193

25. A parol agreement that one may retain his tithes for three or four years is good; but a grant of the tithes of another, though but for a year, is not good, without deed.—8 Jac. B. R. *Anon.* i. 198

26. An agreement that one shall retain his tithes, made after the corn sown, and for the same year, is good; but not if made before the corn is sown, or for more years than one; and all the court agreed that such an agreement for the tithes of another was void.—8 Jac. C. B. *Anon.* i. 198

27. A grant of all his right in tithes passes a lease of tithes which the grantor had in right of his wife, as executrix to her former husband.—10 Jac. B. R. *Arnold v. Bidgood.* i. 202

28. Tithes were assigned by writing on the back of an original indenture; held that they would not pass for more than one year without deed.—13 Jac. B. R. *Sorrell v. Grove.* i. 250

29. A parson, in consideration of a certain sum, covenanted with a parishioner that he should pay no tithes; held, in prohibition, that as this was a bare covenant, by which no interest in the tithes passed, the only remedy was an action upon the covenant.—16 Jac. B. R. *Fulcher v. Griffin.* i. 295
S. P. *Barnwell v. Pelsie.* i. 297

30. The King granted "all that rectory of Dale and all tithes, &c. all which are now extended at the true value of £32 per ann." which did not include the value of certain tithes of a grange then in lease; it was held that those tithes passed under the general words of "all the rectory," though not in-

cluded in the particular of the value, but if the words had been special; viz. the tithes of the grange, and also of such another farm, and also of such other farms particularly named, amounting to the value of £32, then nothing more should pass than according to the recited value.—17 Jac. B. R. *Dixon's case*. *Dickenson v. Reade*. i. 305

31. Prohibition does not lie upon a covenant by deed by a parson, that a parishioner shall hold his land discharged from payment of tithes, the tithes having been assigned to a tenant at will.—17 Jac. B. R. *Aldresh v. Ray*. i. 310

32. If the King grant his manor of *Dale*, and also two closes by name, yet all the manor passes: so if he grant a rectory *recton decimas* in such a place, within the rectory, yet the whole rectory passes, and also all the tithes; but it is otherwise in case of a chapel, for tithes are not properly appendant to a chapel.—17 Jac. B. R. *Grubham v. Grate*. i. 313

33. Tithes cannot pass without deed.—19 Jac. B. R. *Swadling v. Piers*. i. 322

34. An agreement to retain land free from payment of tithe, was held good, although by parol, and that an assignee might take advantage of it.—21 Jac. B. R. *Honycombe v. Swete*. i. 327

35. An agreement by parol does not pass tithes in point of interest; but LEY, Ch. J. said, that for tithes due and to be paid, a contract executed is good without deed.—21 Jac. B. R. *Bennet v. Snell*. i. 327

36. Tithes may pass for years by agreement; but not by lease, without deed, except for one year.—21 Jac. B. R. *Anon*. i. 331

37. Tithes cannot pass as appurtenances to a grange, for they are of several natures; except, as WINCH said, that the grange be the glebe, for if it be, then the rectory may pass by that name.—22 Jac. C. B. *Bone v. Norwich*, Bp. of. i. 331

38. A parson let his tithe hay to the vicar by parol; the court held that the contract was void in law, and that the vicar had no remedy for the tithes.—2 Car. B. R. *The vicar of Axford's case*. i. 355

39. A justification by demise of tithes by parol for one year, held to be merely void. But a parson may discharge a parishioner from tithes by parol, or lease the rectory consisting of glebe and tithes by parol for years.—2 Car. B. R. *Bellamy v. Balthorpe*. i. 355

40. If one contract with the parson for discharge of the tithes of his lands for years, (which may be without deed) and demise his lands to another, yet the parson shall not have tithes, for the discharge runs with the land. But if one take a lease of his tithes, by deed, and demise his land, he shall have tithes of

the lessee.—3 Car. C. B. *Booth v. Franklin*. i. 358

41. An agreement by a parishioner for his tithes for life without deed, is bad.

42. A suggestion of an agreement for tithes "from year to year, so long as the one should be parson, and the other parishioner, if both parties should so long please," is bad; for the words from year to year, make an estate for a year, the next words an estate for life, and the last but an estate at will. But a suggestion of several agreements for 4 years was held good. 4 Car. C. B. *Stone v. Walsingham*. i. 367

43. A testator devised all his free lands to his brother, upon condition that he suffered his wife to enjoy all his free lands in H. during her life; the testator had only a portion of tithes of inheritance in H. and no lands; the question was whether the portion of tithes passed to the wife by this devise. The opinion of the court seemed to be, that being used in a will they did pass, though it would have been otherwise in a conveyance.—1651. B. S. *Ritch v. Sanders*. i. 407

44. Although a lease for tithes cannot be good without deed so as to pass the right, yet a parol agreement by way of retainer, is a good bar to an action.—2 Edw. 6. 13. Car. 2. B. R. *Bernard v. Evens*. i. 434

45. Qu. Whether there can be an occupant of tithes by reason of occupancy of a messuage, barn and glebe, demised together with the tithes.—20 Car. 2. C. B. *Holden v. Smallbrooke*. i. 459

46. If the spiritual court upon a feoffment of tithes and lands without livery adjudge tithes to pass, prohibition lies.—21 Car. 2. B. R. *Anon*. i. 480

47. A lease of tithes cannot be for more than a year, without deed; nor for a year, but as it enures by way of sale.—29 Car. 2. C. B. *Anon*. i. 515

48. Case upon special promise for tithes for six years, held good upon motion in arrest of judgment; though such agreement be not a good lease, nor does any interest pass thereby in the tithes.—35 Car. 2. B. R. *Eaton v. Sherwin*. i. 541

49. An agreement by parol to retain tithes is good and within the stat. 2 Edw. 6. though for more than one year.—4 W. & M. Scacc. *Grove's case*. i. 575

50. Tithes are a tenement.—4 Geo. B. R. *Rex v. Shingle*. i. 738

51. A lessee of tithes by parol cannot maintain a suit for them without making the lessor a party.—2 Geo. 3. Scacc. *Hennings v. Willis*. ii. 188

52. Notwithstanding in a lease from a bishop, a farm was expressed to be demised with all tithes thereto belonging, or therewith

usually letten, yet on evidence that the lessees of the rectory (the bishop being the rector,) had always taken the tithes of the whole parish, including the farm, an account decreed.

—3 Geo. 2. Scacc. *Quaintrell v. Wright*.
ii. 10

53. Although tithes lie in grant, yet when severed they may be contracted to be purchased by the occupier by a parol agreement. But, *semble*, that a parol contract would not be sufficient before severance, or where the purchaser was not also occupier.—6 Geo. 3. B. R. *Chave v. Calmell*.
ii. 214

54. Mere non-payment of tithes, is no evidence against a rector, either ecclesiastical or lay, of a conveyance of the tithes.—36 Geo. 3. Scacc. *Nagle v. Edwards*.
ii. 427

55. By a grant of all tithes arising out of or in respect of farms, lands, &c. the tithes arising out of and in respect of rights of common, appurtenant to such farms or lands, will pass.—38 Geo. 3. B. R. *Lord Gwydir v. Foakes*.
ii. 470

56. Where a rectory, with the lands, tene-ments, glebe, tithes, oblations, rights, and appurtenances thereto belonging, situate in the county of Kent, had formerly been part of the possessions of a religious house, and upon the dissolution had been granted by king H. 8. to a person, his heirs and assigns, *in capite*, by knight-service; it was holden, that the appropriation to the religious house had not altered the original tenure of the lands belonging to the rectory, but that when granted by the crown, they became descendible according to the custom of gavelkind: but with respect to the tithes, (as no layman was capable to have tithes until the dissolution of the monasteries, previously to which all tithes belonged to the church,) they could not be affected by any ancient tenure or rule of descent, but must descend according to the rules of the common law.—47 Geo. 3. C. B. *Doe, on dem. Lushington v. Bishop of Llandaff*.
ii. 557

57. The rector of Bromfield parish having, from the year 1765 (as far back as living testimony could carry it) to 1799, received the tithes of a certain meadow called the demesne, lying in a part of the township of Kelsick, in the parish of Holme Cultram, without interruption or claim from the rector of that parish, (other parts of Kelsick lying in Bromfield) conveyed to the plaintiff in 1779 a messuage and lands in Kelsick, in the parish of Bromfield, and also all tithes of corn arising within the township of Kelsick aforesaid, or within the townfields, territories, precincts, or titheable places thereof: held, that this was evidence against the occupier of the demesne meadow, though lying in Holme Cultram parish, of a title to the tithes in the rector of

Bromfield before the conveyance to the plaintiff; and that the words of the deed were sufficient to convey them.—51 Geo. 3. B. R. *Barnes v. Messenger*.
ii. 605

58. Where a house, land, and tithes, are held under a parol demise, at a joint rent, a notice to quit the house, lands and premises with the appurtenances, includes the tithes.—51 Geo. 3. N. P. *Doe, dem. Morgan v. Church*.
ii. 649

59. A letting by auction of tithes of corn, then standing and growing on the ground, to be transferred by way of lease for one year, to commence before the day of the auction, is a *letting* by auction of the *tenement*, and not a *sale* of the *tithes*: and that, although no actual lease should be afterwards made of such tithes.—57 Geo. 3. Scacc. *Rex v. Ellis*.
iii. 776

60. The vill of B. being part of the parish of B., a recovery is suffered of the tithes of the parish, the deed making the tenant conveying the tithes of the vill. The tithes of the vill pass.—59 Geo. 3. Canc. *Gibson v. Clark*.
iii. 946

TOWN.

1. If a man speak generally of a town, it is to be understood as the hamlet where the church stands.—21 Jac. B. R. *Wiseman v. Denham*.
i. 328

TRAVERSE.

1. *Et quod omnes, et singulae personae, rectoris de, &c.* have used to accept thereof, &c. And the defendant traverses *quod omnes, et singulae, &c.* had not accepted. And it was thereupon demurred; for he ought to have traversed the custom alleged, and not *quod omnes, et singulae, &c.* did not accept. For then, if any of them did not accept, he overthrows the prescription, which is not reasonable.—41 El. B. R. *Green v. Hun*.
i. 147

TRESPASS.—See SEVERANCE—SETTING OUT TITHES—VICAR.

1. If one carry away tithes with his corn, before they are severed from the nine parts, the suit shall be in the spiritual court, but if they are severed from the nine parts trespass lies.—38 Edw. 3.
i. 16

2. A parson may have assize for the rectory, church-yard and glebe which are his freehold, and trespass for the tithes.—38 Hen. 6. i. 39

3. A declaration in trespass for carrying away tithes must allege *vi et armis*.—17 Jac. B. R. *Willis v. Neilder*.
i. 308

4. In trespass for entering the plaintiff's close and taking away corn, the defendants justified as servants to the parson, and that the corn was tithes severed from the nine parts; and held upon special demurrer to be a good plea, and not amounting to the general issue, for as to breaking the close, such matter could not be given in evidence on not guilty, as it might have been if for taking the corn only.—18 Car. 2. B. R. *Minors v. Hunson*. i. 449

TURF.

1. No tithe shall be paid for turf which is to burn.—11 Jac. B. R. 14 Jac. B. R. 1 Ro. Abr. 637.

TURKEYS.

1. Tithes are not due of turkeys or their eggs.—38 El. *Hugton v. Prince*. i. 111
2. Turkeys are titheable, but if tithes are paid of eggs then none are to be paid for the young.—2 & 3 Geo. 3. Canc. *Carleton v. Brightwell*. ii. 7

TURNIPS.

1. Tithe of turnips sown upon fallow land, fed off with the sheep of a stranger, or with the owner's own sheep fatted for sale, shall be paid as for herbage and agistment.—5 W. & M. Cam. Scacc. *Daniel v. Tuffnal*. i. 578
2. Tithe of turnips payable, though the turnips be sown on land that has in the same year yielded tithe of corn.—5 W. & M. Scacc. *Bordley v. Tims*. i. 581
3. Tithes shall be paid for turnips when severed and eaten by cattle and hogs, but none shall be paid when not severed.—8 W. 3. Scacc. *Eachard v. Brown*. i. 623
4. Tithes shall be paid for turnips drawn from the ground and given to milch cows, though upon the farm and in the parish in which the cows were kept.—4 Ann. Scacc. *Humphreys v. Stopher*. i. 675
5. Tithes in kind shall be paid for turnips when drawn or dug up and severed from the ground and sold, or given to profitable or other cattle, or otherwise used.—7 Ann. Scacc. *Ringstead v. Young*. i. 690
6. Tithes are due for turnips sown for a second crop, though tithes have been paid of the first crop, and the turnips be sown for bettering the next year's crop upon the same ground.—7 Ann. Scacc. *Hall v. Filtz*. i. 690
7. The court was of opinion that tithes are not due for turnips sown upon land as an after-crop, where corn has been the same year cut,

and tithes paid for the same.—9 Ann. Scacc. *Wright v. Elderton*. i. 694

8. Turnips pulled shall pay tithes though sown to prepare the land for a better crop of corn, and given to milch cows.—12 Ann. Scacc. *Hason v. Yallop*. i. 703

9. Tithes shall be paid for the depasturing of sheep upon turnips unsevered, where the sheep are sold to the butcher, although tithe has been paid of the wool of such sheep.—12 Geo. Scacc. *Coleman v. Barker*. i. 814

10. Tithes are payable for turnips sown on land after the corn is cleared, fed with sheep and barren cattle.—5 Geo. 2. Scacc. *Swinfen v. Digby*. ii. 31

11. Turnips, where the quantity gathered is sufficiently large, as the growth of a whole field or acre, ought to be set out in heaps, and the parson to have the tenth heap for his tithes. But, if the quantity be small, then the tithes may be set out by casting aside every tenth turnip: this method being, however, liable to fraud from the difference in size, if the small turnips be allotted for the tithe, it will be fraudulent.—8 Geo. 3. Scacc. *Beaumont v. Skilcot*. ii. 226

UNION OF CHURCHES.

1. Churches in cities and towns corporate may be united, but the parishes to continue distinct as to rates, &c.

2. Owners of impropriations, tithes, &c. empowered to annex the same to the parsonages and vicarages where the same lie and arise without license of mortmain.—17 Car. c. 3. § 7. iii. 175

3. An act to make parishioners of the churches united contributors to the repairs and ornaments of the church to which the union is made.—4 & 5 W. & M. c. 6. iii. 188

UNITY.—See MODUS, *How destroyed*.

1. Tithes suspended by unity of possession with the land, upon severance of such possession, are revived, as where a parson purchases a manor within his rectory, and he afterwards lets the rectory or sells the manor.—30 Hen. 8. i. 50

2. Mere unity of possession is no discharge under 31 H. 8. it being assumed in this case that they were once chargeable, but if they are discharged in right it is otherwise.—5 El. Anon. i. 58

3. An abbot had entered into a composition with a rector to pay a certain quantity of wood to be taken in twenty acres of land, in lieu of all tithe wood in his manor: the rectory was afterwards appropriated to the abbey; and after the dissolution the king granted the par-

sonage to one, and the twenty acres to another: it was doubted whether the composition was revived by the severance, or extinct by unity of possession.

4. When things are held by distinct titles, unity of possession does not destroy them.

5. Tithes run with the land, for tithes, of divine right and canonical institution, belong to the parson; and if a parson be seised of titheable lands by purchase *in jure ecclesie*, and afterwards he alienate these lands, the feoffees shall pay tithes, and shall not be discharged by unity in the hands of the parson.—5 El. *Anon.* i. 58

6. Where an abbot held a rectory appropriate, and afterwards purchased land in the same parish, the tithes, which were suspended while the land was in the abbot's hands, will, if it be severed from the rectory, be revived, and the land charged as before the purchase of the abbot.—17 El. *Anon.* i. 66

7. An ancient composition was made *mediantibus abbatibus utriusque conventus* that a certain sum should be paid for the tithes of the lands of the one due to the other. After the dissolution, the possessions of each were severally granted by the crown to different patentees; held, that the composition was not extinguished by the unity of possession, as in the case of a rent-charge, common, and such things which issue merely from the land, and that if the money was subtracted, the tithes should revive. The court also ordered, that the payment should be apportioned among the respective grantees of the land charged.—23 El. The case of the Abbot of *St. Mary's* in York. i. 81

8. Lands belonging to the abbey of Cocker-sand were held not to be discharged of tithe by unity of possession, where it was proved, that tithes had continually been paid for them after the dissolution of the abbey, and the severance of the rectory and lands.—24 El. Scacc. *Kychin v. Holme.* iii. 1198

9. Non-payment of tithes during a unity of possession is but presumption of a discharge, which will be rebutted by payment for twenty or thirty years after severance; but if, after such severance, no tithes have been paid, it will afford strong presumption, that the discharge was by reason of some composition; or that the abbey was of the order of Cisterians, or others which were discharged by the general council: *Note.* This was in the case of the abbey of *Blickling*, a smaller abbey.—26 El. Exch. *Whiskard v. Futter.* i. 84

10. Unity of possession by a religious person of a manor and parsonage, is no discharge for the copyholders *without a prescription*.—27 & 28 El. C. P. *Branche's case.* i. 89

11. Where an abbot had a rectory and lands

within it, and paid no tithes, because he could not pay to himself, and for no other reason, the land, after severance from the rectory, is not discharged by 31 H. 8. for it was not discharged of right: so if the composition or custom were that the abbot should be discharged without extending to his farmers or lessees, if during a lease tithes were paid, as they ought, yet after the lease determined, the patentees under 31 H. 8. shall be discharged.

12. The abbot of Tewkesbury was seised of a rectory impropriate, 11 Hen. 7. he purchased lands within it, it was held that tithes should be paid for them after severance.—30 El. Scacc. *Prowse's case.* i. 95

13. For a prohibition it was alleged, that an abbot and his predecessors had been seised, time out of mind, as well of a manor as a rectory impropriate in the same parish, until the dissolution, and that, *by reason thereof*, the said abbot, &c. had held the said manor discharged of tithes until the dissolution, and then shewed the branch of 31 H. 8. The defendant, confessing the impropriation, pleaded that before the 31 H. 8. the abbot demised the tithes of the rectory, and that at the time of the dissolution, tithes of the manor were paid to such lessee *absque hoc* that the abbot and his predecessor held the said manor quit of the payment of tithes time out of mind, &c. Upon demurrer to this, *Coke* argued, that the traverse was bad, for it traversed their conclusion; for the plea was an argument, wheresoever is unity time out of mind, &c. there is a discharge of tithes; but in the abbot was such a unity, *ergo*, he held discharged of tithes; on the other side it was argued, that the traverse was good, and that unity was no discharge within the statute; but the case was adjourned.—33 El. B. R. *Knightley v. Spencer.* i. 101

14. Two judges against one held, that if there were a perpetual unity in fee of the rectory and in fee of the land at the time of the dissolution, it was a sufficient discharge of tithes by 31 H. 8. without a perpetual unity of the parsonage and land—38 El. B. R. *Green v. Bosekin.* i. 111

15. The stat. 31 H. 8. says "as freely as the abbot retained the same," and it was said that it was the intent of the king and the makers of the act, to discharge the land of payment of tithes in the case of unity of possession, being a general case, to induce purchasers the rather to purchase the land for greater prices, for by the infinite impossibility, and impossible infiniteness, all the discharges which religious houses had could not be known.

16. A general allegation of unity of possession of the rectory and the land is not sufficient under 31 H. 8. it must be a lawful and perpetual unity.

17. If before the dissolution the farmers of the demesnes of a greater monastery had paid tithes, &c. to the abbot, &c. then the intendment of law by reason of unity of possession (which ought to be time out of mind) that the land was discharged of the payment of tithes will not hold; for *stabitur præsumptioni denec probetur in contrarium*. But if the land had been always occupied by the abbots or demised over and no tithes at any time paid for the same before the act, although the land be conveyed to one and the rectory to another, yet the land is discharged of the payment of tithes; and if the farmers of the demesnes had paid tithes before the act, the same should be pleaded by a defendant in prohibition, and issue thereupon might be taken.—38 El. B. R. *Green v. Balser*, or the Archbishop of *Canterbury's* case. i. 113

18. If land were discharged from the payment of tithes, by reason of unity, it shall be discharged by 31 H. 8. in the hands of the patentee, for that privilege runs with the possession.—39 El. B. R. *Blinco v. Barksdale*. i. 134

19. It was pleaded that a prior was seised of a rectory and land, of which, &c. *simul et æmel* from time whereof and at the time of the dissolution, and *ratione inde* the land was discharged, &c. a traverse of the unity at the time of the dissolution, was held to be good; for although there were a unity of possession from time whereof, &c. yet if it were not at the time of the dissolution, the land shall be charged. But if the discharge had been pleaded generally by prescription, and not by reason of unity, then the prescription ought to have been traversed, and not the unity, and so it was ruled 34 El. in C. B. between *Calnady* and *Wyther*.—40 El. B. R. *Button v. Long*. i. 139

20. An abbot, seised of a rectory and manor within it, demised both to one person, who afterwards demised a part of the lands of the manor to a sub-tenant, in whose occupation they were at the time of the dissolution, in 31 H. 8. and had been for four years, and had, during that period, paid tithes; it seemed that these lands were not exempt from the payment of tithes by unity, which it was said must be of both in the hands of the abbot, at the day of the dissolution.

21. POPHAM said, that the unity, in fact, must be traversed, and not the *ratione cuius*, which is matter of law, he also said, that unity for time whereof was not material, and that unity at the time of the dissolution was sufficient, although the land and rectory had been purchased instantly before it.

22. POPHAM also said, that copyholders of abbey lands, when the abbot was also parson, should not be discharged of tithes by unity,

although the abbot had the freehold both of the copyhold and rectory.—41 El. B. R. *Benton v. Trot*. i. 142

23. Where it was alleged that an abbot of a smaller monastery time whereof, &c. had been seised of a rectory and land *simul et semel et ratione inde* the land was discharged by 31 H. 8. a plea that the abbey was founded 5 E. 1. (and so within time of memory) and confessing the unity afterwards, was held good in bar.—45 El. R. B. *Gibson v. Holcraft*. i. 156

24. If a unity of possession by a greater monastery had only been interrupted by a lease granted before the dissolution, which lease was an absolute nullity, *ab initio*, the court thought that a claim of discharge by reason of it, would be good, but otherwise where a lease was made void by the statute.—10 Jac. B. R. *Arnold v. Bidgood*. i. 202

25. Though there were unity of possession of a rectory and land therein at the time of the dissolution of a greater monastery, yet if the land only had been holden from time whereof, &c. it is no good ground of discharge by unity; but the owner of such land may prescribe under the stat. 31 H. 8. that the land was held by the abbot, &c. discharged at such time of dissolution; and since, by virtue of 31 H. 8. but if the abbey were founded within time of memory, then he cannot prescribe at all.

26. Upon great consideration it was resolved and adjudged that a perpetual unity *a tempore cuius*, &c. till the dissolution should be *prima facie* a discharge of the land of payment of tithes, by force of the stat. 31 H. 8. c. 13. for divers reasons, for the statute does not say discharged of tithes, but discharged of payment of tithes; and for other reasons, the chief of which was the infinite impossibility and impossible infiniteness, so that such immunities and discharges as religious houses had before time of memory. cannot be known. And such unity as is within the 31 H. 8. ought to have four qualities:

1. It ought to be *justa*, rightful, and not by wrong. 2. It ought to be *æqualis*, viz. fee in one, and fee in the other; for if the abbots, &c. have held by lease, *a tempore cuius*, &c. that is not a unity within the statute. 3. It ought to be *perpetua*, *a tempore cuius*, &c. 4. It ought to be *libera*, free from payment of any tithes; but if their farmers at will, for years, &c. have paid tithes to them before the dissolution, then the intendment and presumption of law upon the perpetual unity fail.

27. Where issue is joined upon a plea of perpetual unity, then the prescription of unity ought to be traversed, and not the conclusion *ratione cuius*; as in logic, the syllogism cannot be denied, but the *major* or *minor* proposition; so in law, the *major*, where there is a perpetual

unity of a rectory and land therein until the dissolution, &c. there the land is discharged of tithes; here has been a perpetual unity, &c.—*ergo* the land is discharged of tithes; this conclusion cannot be denied.

28. It was said by POPHAM, Ch. J. in the argument of this case, that if no tithes were paid after the statute, it should be intended that no tithes were paid before the statute.—10 Jac. C. B. *Priddle v. Napper*. i. 205

29. Possession by an abbot of a smaller monastery of lands and a rectory, *simul et semel*, from the foundation of the abbey to the dissolution, 27 Hen. 8. is not a sufficient ground of discharge, if it be shewn that the abbey was founded within time of memory; but if there had been a perpetual unity, and no tithes actually paid, or if they had been suspended, by being leased with the lands, the court (according to Rolle) seemed to think that it would be a good ground of discharge with respect to the smaller monasteries.

30. Where tithes were leased for a rent at the dissolution, it was held that there could be no discharge by unity, for the payment of rent for the tithes was a payment upon the matter of tithes, and a seisin of them.

31. Where the foundation of an abbey was shewn to have been within time of memory, it was ruled there could not be a sufficient unity for a discharge from the payment of tithes.—12 Jac. B. R. *Prowse v. Leyfield*. i. 229

32. An abbot seised of a rectory and lands therein *simul et semel*, in 26 Hen. 8. demised the lands for 40 years, and the tithes of hemp, flax, corn, and hay, growing thereon, and covenanted that the lessee should not pay tithes of hemp, flax, corn, and hay, but that he should pay tithes of lamb and wool to the lessor and small tithes to the vicar; held upon severance of the land and rectory after the dissolution, tithes should be paid; for, 1st, The payment of rent in lieu of the tithe was a payment of the tithes, and amounted to as much. 2d, There had been a payment of wool and lamb always, which is sufficient within the meaning of the statute, for if tithes of one kind only have been paid, yet if the soil be changed so that tithes of another kind are to be paid, this payment is sufficient within the statute. 3d, The retainer of the tithes by way of covenant is sufficient within the statute. For from all it appeared that there was only a discharge of payment of tithes *de facto* by reason of the lease, which rebutted the presumption that there had originally been a discharge *de jure* by bull, composition, &c.—15 Jac. B. R. *Dobitoff v. Curteene*. i. 262

33. The prior of Hatfield was seised of a rectory appropriate and lands therein, the priory was dissolved by 27 H. 8. and its posses-

sions came to the king, who, anno 28, granted them to the abbey of Barking, which was dissolved by 31 H. 8. held that upon severance the lands were not entitled to the benefit of 31 H. 8. and so discharged by unity, although perhaps by prescription they might according to *Hobart*, but such prescription might be avoided by shewing that the abbey was discharged by order, composition, or bull within time of memory, for such privileges being personal were not continued by 27 H. 8.

34. Such unity as is allowed for discharge is not so allowed for itself, and of its own strength, but in contemplation of a true discharge, which in such confusion of possessions and privileges of all natures may well be presumed, though it cannot be proved.—15 Jac. C. B. *Wright v. Gerrard & Hildersham*. i. 289

35. Where the tithes of certain lands belonging to a smaller monastery were in lease at the time of the dissolution, there is no discharge for it appears there was only a personal discharge in respect of the unity, and no real discharge of the land.—17 Jac. B. R. *Dixon's case*. *Dickenson v. Reade*. i. 305

36. Though unity by prescription be good *prima facie*, and be now used for a discharge, yet it is not so for itself, but for a more perfect discharge that shall be presumed, though it cannot be found for the infiniteness and impossibility of search of things beyond memory.—18 Jac. C. B. *Slade v. Drake*. i. 314

37. Where upon suggestion of a unity of possession of a rectory and the lands of which, &c. the defendant pleaded for consultation, that time whereof, &c. the lands had been demised and tithes paid by the farmers thereof, it was held by B. R. in error from C. B. that the plea was too general, and that no issue could be taken upon it, and therefore bad.—14 Car. B. R. *Broadhead v. Lewys*. i. 397

38. In debt on 2 Edw. 6. defendant pleaded that a prior and his predecessors were, time out of mind, seised *simul et semel* of a manor and rectory, and by reason of the unity was discharged by 31 H. 8. upon demurrer it was contended that it should have been pleaded that the prior was seised as well of the 47 acres in question as of the rectory, and not that he was seised of the manor generally, for copyhold and leasehold are not within the statute, and this was as much to be intended copyhold as freehold. KEYLINGE held that the possession in discharge must be strictly pursued, and therefore general seisin of the manor not sufficient; but by TWISDEN and MORETON, the bar is good to a common intent, and the plaintiff should reply it was copyhold or leasehold.—21 Car. 2. B. R. *English v. Johns*. i. 479

39. A prior and convent seised in fee time out of mind, till the dissolution of a rectory

and lands within that rectory *simul et semel*, made a lease of the rectory and lands *simul et semel* for forty years; during this lease the priory was dissolved, and the king granted the rectory to the plaintiffs, and the land to the defendant; the lease expired and no tithes were ever since paid; the question was whether those lands were discharged from payment of tithes? and it appears they were, for it was argued that perpetual unity presumes a real discharge that cannot now be proved, and therefore works a discharge without other proof, and causes the proof to destroy this presumption to be brought of the other side of a payment that once was; and that though the lands were in lease, that was not material; and the plaintiff, finding the law clear against him (as his counsel acknowledged) after argument, never proceeded to judgment in it, and the defendant, not recovering costs in his case, if adjudged for him, (2 Inst. 651.) had no reason to put it on, and so it rested.—22 Car. 2. *Wildman & Clayton v. Oades.* i. 483

40. Lands given to the crown by the statute 31 H. 8. are only discharged from tithes, where there had been a perpetual unity until the dissolution by that statute; and therefore, where king H. 8. in the 30th year of his reign, translated a priory and convent to a dean and chapter, and transferred the possessions of the former to the latter, so that their possessions were not surrendered to, or vested in the crown, the court held, that unity of possession of a manor and rectory in the hands of the prior and convent, and afterwards of the dean and chapter, did not exempt the demesnes of the manor from tithes, when the manor and rectory came to be severed.—6 Geo. 2. Scacc. *For v. Bardwell.* ii. 35

41. Exemption on the ground of unity of possession applies to the greater abbeys only.—32 Geo. 3. Scacc. *Clavill v. Oram.* iii. 1369

VENISON.

1. A grant of tithe of venison taken in Essex, made by the king to the bishop of London, enforced.—*Anon.* i. 1

VETCHES.—See TARES.

VICAR.

See. ENDOWMENT—PARSON AND VICAR—TITHES, to whom payable—VICARAGE.

1. A vicar endowed shall be a secular man, and not a religious.—4 Hen. 4. c. 12. iv. 16

2. A vicar prescribed that he and his predecessors, vicars there, had used to have the tithes of a place for time whereof, &c.—35 Hen. 6. i. 38

S. P. 22 Edw. 4. i. 47

3. Where in an action of trespass, the vicar pleaded, that he took certain wood as tithes, he must shew that the tithe of wood belongs to him, as of common right it belongs to the parson, and he was compelled to amend his plea.—37 El. B. R. *Mantell's case.* i. 109

4. A vicar sued in the spiritual court for tithes with which the vicarage had been endowed in the time of H. 3. the court refused a prohibition upon allegation of a modus in discharge of those tithes. Qu.—8 Jac. C. B. *Anon.* i. 192

5. Where a vicar was endowed *de decimis garbarum*, and had tithes of hay; held that it was by reason of a custom that he had always taken it.—18 Jac. B. R. *Sir Edward Coke's case.* i. 314

6. The choice of a vicar belongs of right to the parson, but the parishioners may prescribe to elect.—21 El. B. R. *Code v. Hulmed.* i. 326

7. If there be no endowment *de facto* of a vicarage, the vicar cannot claim any thing. In things of antiquity *omnia præsumuntur solemniter esse acta.*—2 Car. B. R. *Cope v. Bedford.* i. 353

8. Certain tithes of a manor within a parish, and tithes of a different description in the rest of the parish, and the tithe of the tithes of the corn of the rector decreed to a vicar, according to his endowment; and in order that he might retithe the tithes, the farmers were ordered to set them out in kind for the purpose.—1657. Scacc. *Brittaine v. Lord Coventry.* i. 419

9. Tithes decreed to the vicar according to usage, although excepted in the endowment.—1657. Scacc. *Coe v. Mason.* i. 423

10. In a bill by a vicar, he did not set out how the tithes became due to him, whether by endowment or prescription, as he ought to have done; an exception at the hearing, after answer and depositions, was over-ruled, inasmuch as by his answer, the defendant had admitted his title, *quod nota*; for it has often been ruled contrary.—1658. Scacc. *Button v. Honey.* i. 428

11. The vicar, in a bill for tithes in the exchequer, did not shew how he was entitled to them, but it was held good. *Quod nota*, for it is against many precedents of demurrers for that cause held to be good.—15 Car. 2. Scacc. *Stone v. Ludlowe* and others. i. 438

12. Where a vicar has used time out of mind, or for a long time, to take tithes or other profits, he shall not be concluded by their not being expressed in the endowment of the vicarage, although no liberty was reserved in

that instrument of augmenting or diminishing; for it shall be presumed by reason of a long possession of such tithes, &c. that the vicarage had at some time been augmented therewith.—15 Car. 2. Scacc. *Twiss v. Brazen Nose College* and others. i. 439

13. Tithes of cole seed, mustard seed, hemp seed, and flax seed, decreed to the vicar according to usage.—1 W. & M. Scacc. *Bullin v. Brecknock*. i. 561

14. Bill by vicar dismissed where no proof of payment.—2 W. & M. Scacc. *Streaton v. Downes*. i. 568

15. A vicar is not entitled to tithes without endowment.—5 W. & M. Cam. Scacc. *Wild v. Acton*. i. 575

16. EYRE said, that sometimes the vicar, by endowment, (and it shall be presumed that what the vicar has enjoyed, he was originally endowed of) shall have tithes of things which are not small tithes, as hay.—5 W. & M. B.R. *Wharton v. Lisle*. i. 579

17. Tithes are not due of common right to vicar, but only by endowment, of which usage is evidence.—6 W. 3. Scacc. *Smelton v. Bridges*. i. 590

18. Where a vicar had usually taken the tithe of turnips sown as a first crop, but not of those sown after the corn reaped, (which had not been paid to any one,) the court held, that the vicar should not have them, as he had no endowment or possession of them.—9 Ann. Scacc. *Wright v. Elderton*. i. 694

19. Where a vicar claimed tithes of hay, and all other privy tithes in a parish, an issue was directed, to try “Whether the vicar ought to have the tithe of hops in all the parish, or in any, and in what part thereof:” and 2dly, “Whether he ought to have certain tithes arising upon and out of the demesne lands of the manor of Ledbury.—9 Ann. Scacc. *Walker v. Webb*. i. 696

20. It was objected that a vicar ought to shew an endowment of tithe of herbage, or that he had usually received it; but as an endowment of all small tithes was afterwards produced, the point was not determined.—2 Geo. 2. Scacc. *Ayde v. Flower*. i. 722

21. A vicar entitled to tithes of corn, grain, and hay, on all ancient inclosures in a parish.—3 Geo. Scacc. *White v. Keate*. i. 730

22. An issue directed to try whether the vicar of a parish was entitled to any, and what, tithes of hay except upon seven meadows.—5 Geo. Scacc. *Geale v. Winter*. i. 743

23. Where a defendant by his answer admitted that the plaintiff (a vicar) was entitled to all sorts of tithes, but relied upon a special exemption; it was held, upon such admission, that the plaintiff need not shew any special

title by endowment or prescription, as he otherwise ought to have done.—6 Geo. Scacc. *Pye v. Rea*. i. 755

24. A vicar has the same right to all tithes in his endowment, as a rector has of common right even without usage, unless an usage to the contrary is shewn.—7 Geo. Scacc. *For v. Ratty*. i. 763

25. The vicar being endowed with all tithes but of corn, lambs, pigs, and geese; it was held that he was entitled to tithes of hops, though introduced since the endowment; and also of clover, sainfoin, and rye-grass, which are kinds of hay.—7 Geo. Scacc. *Franklyn and others v. Master and Brethren of St. Cross*. i. 768

26. Where a vicar proved that he was entitled to all small tithes in a parish, the court decreed tithe of herbage and furze to him, though only one instance of payment of agistment to him for the close in question within thirty years was given.—10 Geo. Scacc. *Goole v. Jordan*. i. 793

27. A vicar claims the tithes of hay arising within the manor and tithing of Connock, in the parish of Chirton, excepting only of three meadows, the tithes of which belong to the impropriator of Chirton.—12 Geo. Scacc. *Peirce v. Warrenner*. i. 821

28. A vicar entitled to the small tithes of the parish, excepting from the rectory and demesnes of the church, and the tithe-hay on the copyholds belonging to the Bishop of Winchester.—12 Geo. Scacc. *Somerville v. Wise*. i. 822

29. A vicar entitled to small tithes except of lands formerly belonging to dissolved monasteries.—13 Geo. Scacc. *Lawrence v. Yeates*. i. 828

30. Vicar may be entitled by prescription or endowment to the hay tithes of the glebe of the parsonage.—2 & 3 Geo. 2. C. B. *Barton v. Hollis*. ii. 8

31. Reputation, that tithes belonged to the vicar, and payment of them by some of the parishioners, and of a composition by others, above 100 years, and two former decrees in favour of the vicar, (though alleged to have been improperly obtained, and in the absence of proper parties,) held sufficient evidence of some antient endowment.—6 Geo. 2. Scacc. *For v. Bardwell*. ii. 35

32. A vicar may not only be endowed of the tithes of a parish, but of a pension likewise; and therefore how can I presume he was endowed of the tithes, when he might be endowed of this annual payment by way of pension? If it depended upon this only, I would enquire, whether in any case tithes have been decreed in kind to a vicar, where there is

no evidence of tithes having ever been paid to him in kind.—20 Geo. 2. Canc. Lord Chancellor in *Carte v. Ball*. ii. 103

33. A vicar may avail himself of his general title to tithes in opposition to a pecuniary composition, even though established by deed, executed by patron, parson, and ordinary.—16 Geo. 3. Scacc. *Lloyd v. Mortimer*. ii. 302

34. A vicar may found his claim to tithes either by *prescription* or *endowment*; for though no endowment can be found, evidence of usage, which would not support a prescription, may establish an endowment.—21 Geo. 3. Scacc. *Jackson v. Woodroffe*. iii. 1302

35. A particular and minute enumeration of several articles in the instrument of endowment does not preclude the vicar's right to other small tithes not mentioned therein.—56 Geo. 3. Scacc. *Manby v. Curtis*. iii. 733

VICARAGE.—See ENDOWMENT.

1. All appropriations of vicarages made since the first year of R. 2. shall be void.—4 Hen. 4. c. 12. iv. 16

2. According to *Yelverton*, if the vicarage be diminished, the vicar shall have more of the parsonage, and if the parsonage be impoverished, the vicarage shall be at an end, and restored to the parsonage, and so but one church.—*Fortescue* thought, that although by sudden accident the vicarage or parsonage might be in such decay that all the vicarage should be re-joined to the parsonage, yet that they were several advowsons.—31 Hen. 6. i. 36

3. There can be no augmentation of a vicarage, but by parson, patron, and ordinary, and that but for an insufficiency of the endowment before, and such augmentation is a spiritual act.—22 Edw. 4. i. 47

4. Endowment is to be presumed where a vicarage has long continued, for *omnia præsuntur solemniter esse acta*, and in time originals of endowments will perish. 30 El. Cam. Scacc. *Grymes v. Smith*. i. 95

5. Though a vicarage had not been presented to for 160 years, yet it shall not be adjudged to be discontinued, or reunited to the rectory, for it is the default of the parson himself, and somewhat ought to be shewn of the reunion thereof.—44 El. C. B. *Robinson v. Bedell*. i. 155

6. A parsonage was appropriated to a priory in 1266, and a vicarage endowed, afterwards the priory becoming poor, the vicarage in 1422 was again united to the rectory, to be holden to the prior and convent, they to serve the cure by a secular chaplain or one of their own canons; held that this was a restitution, and

not an appropriation void by 4 H. 4. c. 12.; and if such union had been defective, as the restitution was good in reputation, the statute of dissolution had fully settled the same in the crown.—7 Jac. C. W. *Stafford's Case*. i. 181

7. The stat. 4 H. 4. c. 12. is not retrospective, and it was competent to the pope to dissolve a vicarage founded in the time of King John, and to reannex it to the parsonage, notwithstanding that statute and 15 R. 2.; besides 31 H. 8. and 35 Eliz. will supply any defects in the dissolution of a vicarage, by reputation, dissolved: the judges said there would otherwise be great inconvenience from these "sleeping" vicarages.—16 Jac. B. R. *Britton v. Ward*. i. 298

8. Tithes may be due out of a vicarage, for an abbot or other person might have had such a portion, which might have come to the claimant.—16 Car. 2. B. R. *Wright v. Beal*. i. 447

9. If in a suggestion the existence of a vicarage is denied, it must be tried at common law.—12 W. 3. B. R. *Smith v. Wallett*. i. 638

WASTE.—See BARREN LAND.

1. Waste ground is such as no man can tell to whom it certainly belongs, and is uninclosed and unbounded with hedge and ditch; but that which is inclosed and hedged and ditched, and the lord known, is not waste ground.—21 & 22 El. *Tanner v. Kirkham*. i. 81

2. Although the statute of Merton and 2 E. 6. c. 13. take notice of waste land, yet in ejectment it is bad for uncertainty, for it may comprehend land of any quality.—1656. Scacc. *Hancocke v. Price*. i. 417

WAY.—See HAY—SPIRITUAL COURT—TITHES, how to be paid.

WHEAT.—See SETTING OUT TITHES.

WILD DUCKS.—See DECOR.

WILD OR WEALD.—See WOOD.

WILLOWS.—See WOOD—CUSTOM.

WOAD.—See PARSON AND VICAR.

1. Woad growing in nature of a herb, the tithe thereof ought to be reputed among small tithes.—1 Car. C. B. *Udall v. Tindall*. i. 339

2. Tithe of woad is a prædial tithe.—3 Jac. Scacc. *Norton v. Clarke*. iii. 1211

3. A custom was pleaded, that in consideration of the expense of gathering the first crop of woad in baskets, and paying the tenth basket thereof, the parson should take it for all the tithes thereof, for the whole year; and also, that no tithes were due of the second cutting thereof, by the law of the land: the better opinion of the court seemed to be, that tithe was payable of every cutting as well as the first.—9 Car. B. R. *Andrews v. Lane*. i. 377

WOOD and UNDERWOOD.—See CUSTOM. DISCHARGE.

1. Tithes wood, underwood, and *silva cædua* in dispute.

17 Edw. 3.	iv. 8
18 E. 3.	<i>ib.</i>
21 E. 3.	iv. 9
25 E. 3.	<i>ib.</i>
43 E. 3.	<i>ib.</i>
45 E. 3.	<i>ib.</i>
47 E. 3.	iv. 10
50 E. 3.	<i>ib.</i>
51 E. 3.	iv. 11
1 R. 2.	iv. 12
2 R. 2.	<i>ib.</i>
7 R. 2.	iv. 13
8 R. 2.	<i>ib.</i>
14 R. 2.	<i>ib.</i>
15 R. 2.	iv. 14
16 R. 2.	<i>ib.</i>
2 H. 4.	iv. 16
2 H. 5.	iv. 18
9, 10 & 11 H. 6.	iv. 20

2. The common law is a prohibition in itself, that one shall not have tithes of great trees as *silva cædua*, for the 45 Ed. 3. which gives a prohibition, gives it as it was before, which shews that it laid at common law.—9 Hen. 6. i. 33

3. Hornbeam-pollards, though of the age of twenty years, are not such great wood as is intended by the statute 45 Edw. 3. c. 8. for they are not timber, nor serviceable in building, but only fit for fuel; and therefore if they are cut down at that, or any greater age whatever, tithes shall be paid for them, and by the same reason tithes shall be paid for the loppings and branches of them, though they are of the age of twenty years and more, but if the tree itself is privileged from tithes, so shall the germins above twenty years of age which grow from it

be privileged, as the germins of that age of oak and ash and such like, for a branch of above twenty years of age may be of service in building, and therefore it shall be exempt from tithe as well as the principal tree shall.—17 El. *Soby v. Molins*. i. 60

4. Birch shall pay tithes, for it is not what is intended by the stat. Edw. 3. by the name of *Gross Boys*, which is such as serves for building, and other uses of a higher nature, and not only for fuel, as the nature of birch is, though above twenty years old; and of oak and elm, cut down before the age of twenty years, tithes shall be paid, for until that age they are not of such value as the law intends for the purposes aforesaid.—24 El. B. R. *Foster v. Leonard*. i. 82

5. In a suit for tithes of faggots, it was held, that none should be paid for those which were made of loppings from stocks of oak, ash and beech, before cut, which stocks were not shewn to have been cut within twenty years before the last fall; and that where willows, hornbeam, &c. grew promiscuously among the oaks, and the owner cut the whole and made them together into faggots, where the most part of every faggot was oak, so as the severance of the willows, &c. from the oak, was not worth the charge, no tithes should be paid; but if the greater part were willows, &c. tithes should be paid.—26 El. B. R. *Daws v. Molins*. i. 86

6. In a case for tithes, the defendant prescribed to pay but three-farthings for the tithes of all willows cut down by him in such a parish. COKE said, it was no good prescription; for thereby, if he cut down all the willows of other men also, but three-farthings should be paid for them all. But he ought to have prescribed for all willows cut down upon his own land, and then it had been good. But as the prescription was, it was unreasonable; and of that opinion was the whole court.—29 El. B. R. *Anon.* i. 91

7. If timber trees are cut and new germins grow, no tithe is due, although they be cut under the age of twenty years.—29 El. B. R. *Wray v. Clench*. i. 91

8. No tithes shall be paid for the germins which grow from the roots or stems of timber trees felled.—29 El. C. B. *Anon.* in *Liford's* case. i. 92

9. Trees once privileged as timber, shall not render tithes for the loppings, though cut every fourteen or fifteen years. POPHAM said that tithes might be paid for the loppings and yet the trees be privileged, but that must be by reason of usage: as if a man lop a tree which is under the age of twenty years and not timber at the time of the lopping, if it become timber and above twenty years of age, and it had used to be lopped every twelve or fourteen years, it

shall pay tithes, but only by reason of the usage.

—36 El. B. R. *Rames's case*. i. 108

10. The tithe of wood of common right belongs to the rector.—37 El. B. R. *Mantell's case*. i. 109

11. Prohibition for suing for tithe of faggots of oak and elm, *cautelà* making his libel for faggots, which were of beech and thorn; defendant prayed a consultation *ita quod* he should not meddle with faggots of oak and elm, for otherwise a stick of great wood might be put into the faggots, and so the parson be deprived of the tithes of the residue. The court held that the special matter must be shewn that the oak and elm were so intermixed that the parson could not do otherwise, but that no consultation should be granted as it then stood. It was said that in the spiritual court, though the libel be for wood of one kind, and it is found of another kind, yet sentence will be for the plaintiff.—37 El. B. R. *Buckhurst v. Newton*. i. 109

12. Trees once privileged as timber shall not pay tithes, though they have become rotten, and are cut down for fire-wood. So the branches of trees not lopped for twenty years, and so privileged as timber, shall pay no tithes, though they be afterwards cut every seven years.—38 El. B. R. *Ram v. Patenson*. i. 133

13. Tithes shall not be paid of beech trees above twenty years old being timber, nor of decayed oaks (of that age), though not timber, and by reason of rottenness used for fire-wood.—40 El. *Holliday v. Lee*. i. 138

14. If timber trees have been usually topped and lopped, no tithes shall be paid of them; for as the law privileges the body of the tree, being parcel of the inheritance, so it privileges the branches also: and if a man fell his timber trees, tithes shall not be paid for the germins which are growing *ex radicibus seu stipitibus*, in respect that the root is parcel of the inheritance; nor shall tithes be paid for a timber tree which, from decay, has become unfit for building.—42 El. C. B. *Sampson v. Worthington*. i. 152

15. Asp shall not pay tithes; and if trees be cut for housebote, hedgebote, ploughbote, cartbote and firebote, no tithes shall be paid of them.—43 El. B. R. The parson of *Ramsey's case*. i. 153

16. A timber tree once privileged shall not be titheable because rotten; and if a tree, having attained the age of twenty years before it be lopped, shall after that age be lopped every ten or seven years, no tithes shall be paid of the loppings; but if it have been lopped before the twenty years, tithes shall be paid of subsequent loppings.—2 Jac. *Broke v. Rogers*. i. 158

17. No tithes are due of the loppings of [timber] trees above twenty years of age,

whether lopped within twenty years or not.—

2 Jac. B. R. *Reynold's case*. i. 160

18. Tithes shall be paid of birch though above twenty years old; so of holly, alders and maple.—5 Jac. B. R. *Anon*. i. 167

19. Beech was said, by the common law, not to be timber; but in a country where wood is scarce, and it is reputed timber, no tithe shall be paid.

20. *Silva cædua*, for which tithe shall be paid, is under the growth of twenty years; but for wood which is not timber, tithes shall be paid, though above the growth of twenty years.—5 Jac. C. B. *Man v. Somerton*. i. 172

21. It was said by Coke, C. J. that it had of late time been adjudged twice, that if privileged trees be often lopped for fuel, yet the tops and lops are not titheable, for the body being discharged, so shall the branches.—8 Jac. C. B. *Dr. Newman's case*. i. 192

22. If a man top oaks within the age of twenty years and after leave the tops to grow above twenty years, no tithes shall be paid of them, for it is become timber.—10 Jac. *Per Coke*. 1 Ro. Abr. 640.

23. If a tree under twenty-one years growth be topped, and suffered to grow, and afterwards be lopped and topped again, no tithes shall be paid, although it were not privileged at the first cutting.—10 Jac. C. B. *Anon*. i. 202

24. Timber trees are parcel of the inheritance, and no tithes shall be paid for them, although they become decayed through age, nor for their roots, nor bark, nor for germins that grow from their stocks.—12 Jac. B. R. *Stampe v. Clinton*. i. 234

25. Qu. Whether a custom to be discharged of tithes of underwood in the weald of Kent be good, for Coke, C. J. and Dodderidge seemed to think that some ancient instrument or matter of record should be shewn as the foundation of the *non decimando*, which in such cases they thought was in respect of some composition.—12 Jac. B. R. *Russell v. Patridge*. i. 236

26. By custom tithes shall be paid of wood consumed in a house.—14 Jac. *Watley v. Hanbery*. 1 Ro. Abr. 642.

27. In a suit for wood under twenty years growth, a prohibition was granted upon a suggestion that it was used for hedge poles for coppices, for which poles tithes had not been used to be paid.—14 Jac. B. R. *Lane's case*. i. 254

28. If a man buy woods titheable and burn them in his house, he shall not pay tithes for them.—14 Jac. C. B. *Ellis v. Drake*. 1 Ro. Abr. 644

29. Where by the custom of the country, beech trees are timber, no tithes shall be paid for them if above twenty years growth.—14 Jac. B. R. *Lapthorne's case*. i. 255

30. Prohibition to a libel for tithes of hasel, holly, willow, whitethorn, &c. being of twenty-one years growth, where by custom they were used for timber to build and repair their ploughs; and a case was cited for holly, willow, and maple. It was also said, that in *Cumberland* beech was used for timber, for scarcity of other trees will alter the case.—15 Jac. C. B. *Pinder v. Spencer*. i. 289

31. Prohibition was granted to a libel for tithe of willows, in Hampshire, upon a surmise that they were used for timber in that country.—15 Jac. C. B. *Guffly v. Pindar*. i. 295

32. Prohibition was granted to a suit for tithes of cherry trees, and asp, and beech trees, in Buckinghamshire, for in that county they serve for timber; and asp trees serve for arrows, which are the defence of the realm.—17 Jac. B. R. *Wright v. Powle*. i. 305

33. Prohibition was granted to a libel for tithes of *silva cadua* in the Wylde of Kent, and issue being taken on the prescription, it was found for the plaintiff, as had been before the case with respect to the Wyldes of Sussex and Surrey.—17 Jac. B. R. *Earl of Clanrickard v. Lady Denton*. i. 306

34. The parties were at issue upon a custom *de non decimando* of wood within the Weald of Sussex, which is no *venue* that the court can notice.—17 Jac. C. B. *Fawcner v. Andrews*. i. 310

35. Prohibition to a suit for tithes of old rotten trees cut for fuel.—22 Jac. B. R. *Scott v. Eyre*. i. 337

36. If trees be not lopped before twenty years growth, the bodies privilege the branches; but if oak or ash be lopped under twenty years growth, the loppings will be always titheable.—4 Car. C. B. *The Vicar of Wainsborough's case*. i. 362

37. Where a custom was alleged by one, that the owners of a house and land in a parish who paid tithes to the parson, should not pay tithes of fire-wood spent in their houses, and found against him; it was moved in arrest of judgment that no consultation should go, inasmuch as such wood was discharged by the law of the land; but the court held that it was not discharged *de jure per legem terræ*, but by special custom in respect of some consideration to the parson in another shape, as a hearth penny, or by reason of payment of tithes of other lands; but it was said by Croke and Yelverton (according to *Hetley*) that there were many precedents of prohibition in such cases without customs alleged.—4 Car. C. B. *Norton v. Harmer*. i. 363

38. Wood for fuel is titheable.—7 Car. C. B. *Rooket v. Gomershall*. i. 375

39. No tithe is due of the roots of under-

wood, but by custom, which may make that titheable which is not of itself so.—15 Car. B. R. *Anon*. i. 399

40. A custom to pay no tithes of loppings, or wood for fire or hedges, held good.—17 Car. C. B. *Weeden v. Harden*. i. 401

41. If timber trees that have been usually lopped, grow scattered in a wood, when the wood is cut these shall only privilege themselves and the other shall pay tithes, but then the libel ought to be special for such part of the wood only. It is not the party's application of the wood to a particular use as timber, that will privilege it, if the usage has been otherwise.

42. Wood, usually cut for fire-wood, shall pay tithes, although it be permitted to grow for twenty-five years, or more; and by *WINDHAM*, pollards of fifty years growth shall pay tithes when felled.—18 Car. 2. B. R. *Cornwall v. Haws and Bishop of Hereford*. i. 450

43. A custom that underwood cut and used for fencing of corn in general, whereof tithes are payable, and not sold or otherwise disposed of, should be discharged from payment of tithes, is void and unreasonable; *secus* if it were used for fencing the party's own corn.—20 Car. 2. B. R. *Croucher v. Collins*. i. 469

44. A suggestion for prohibition to a suit for tithes of wood, alleging a custom that the parishioners should not pay tithes of wood spent in their houses, is not good, unless it be also stated that the parishioner held land, and that the wood was spent in his house of husbandry, or for hedging the corn of such land, by which the parson had *uberiores decimas*: it was ordered to be amended.—22 Car. 2. B. R. *Tilden v. Walter*. i. 481

45. Wood used for fuel in a house of husbandry, may be exempt from tithes, although the house be not ancient, for the husbandry is the main, but if sold, tithe will be due.—22 Car. 2. B. R. *Watson v. Smyth*. i. 482

46. The court of exchequer held, that wood set out for tithes, ought to be stacked and faggoted.—24 Car. 2. Scacc. *Brabourne v. Eyres*. i. 497

47. Tithes decreed for coppice and hedge row wood and loppings of trees, when sold or not spent in the house.—27 Car. 2. Scacc. *Turnor v. Weedon and others*. i. 507

48. Stub oak and ash is titheable in the county of Essex, not being there accounted timber; but some trees of oak and ash, being seconds or standards, for which no tithe is due, being felled therewith, an account was ordered to be taken thereof.—32 Car. 2. Scacc. *Turnor v. Smith*. i. 526

49. Wood of timber trees cut into faggots and billets, shall pay tithe.—3 W. & M. Scacc. *Buckle v. Vanacker*. i. 570

50. An alleged custom of setting out tithe-wood by single sticks, or stick meal, held to be irregular and illegal, as being unequal and fraudulent. A custom to set it out in loads, &c. was alleged by the rector.—4 W. & M. Scacc. *Lister v. Cane and Salmon*. i. 572

51. Verdicts on two trials found that the Wild of Surry is exempt from tithes of wood.—4 W. & M. Scacc. *Salmon v. Denyer*. i. 574

52. Beech found to be timber upon an issue directed to try the question.—6 W. 3. Scacc. *Abbott v. Hicks*. i. 584

53. Tithes decreed of broom made into bavins; of the lops and tops of old timber pollards, and of the hedge rows.—6 W. 3. Scacc. *Biggs v. Martin*. i. 585

54. Tithe of wood made into faggots and bavins is due in the parish of Walthamstow, except for oak pollards and standills, called black coates and white coates.—6 W. 3. Scacc. *Northleigh v. Collard*. i. 589

55. The lops and tops of timber trees are privileged by law from the payment of tithes as well as the bodies.—6 W. 3. Scacc. *Layfield v. Couper*. i. 591

56. Wood is not titheable of common right, being part of the freehold, but it is titheable by custom only, for though trees are renewing yearly, yet they yield no annual profit.—6 W. 3. B. R. *Hicks v. Woodeson*. i. 592

57. Alder poles are not timber, therefore titheable. Tithes are due of underwood made into faggots when not consumed in a house of husbandry in the parish.—6 W. 3. Scacc. *Goodall v. Perkins*. i. 606

58. Wood which is burnt in the house is only exempt from tithes so long as it is burnt in the parish in which it grows.

59. Where a man has wood in one parish, and arable land in another, if he make use of the wood in fencing the arable land, yet he shall pay tithes to the parson where the wood grows; but if it had been in the same parish, it would have been otherwise.—8 W. 3. C. B. *Scoles v. Lowther*. i. 621

60. No tithe is due for hop poles or for their bark sold.

61. For fuel spent in fire to dry the hops, tithes shall be paid; because the parson has no benefit by that, the tithes being paid before they are dried.

62. When the parson has tithe of corn, no tithe of wood used to fence it. No tithe of any thing whereby the tithes are increased.

63. *Quære*, whether tithes shall be paid of fuel consumed in the house.—9 W. 3. Scacc. *Anon.* i. 625

64. Tithes are to be paid of hop poles.—10 W. 3. Scacc. *Gee v. Pearck*. i. 632

65. A custom in *non decimando* that no tithes shall be paid in a parish for wood and

furze burnt is good.—12 W. 3. Scacc. *Dowdeswell v. Harker*. i. 637

66. One may prescribe in *non decimando* for wood spent in an ancient messuage for husbandry, for formerly tithe was not paid for wood, but it is settled by statute to be paid only where it was usually paid; so that if there was a custom before, the statute does not take it away.—13 W. 3. B. R. *Selby v. Bank*. i. 640

67. Germs of the roots of oak trees not cut till after twenty years old not titheable, but growing from a root the tree whereof was not twenty years old when cut, tithes shall be paid.—13 W. 3. B. R. *For v. Thexton*. i. 642

68. Tithe in kind is due for wood converted into charcoal.—13 W. 3. Scacc.—*Coe v. Smith*. i. 643

69. Timber trees above twenty years growth, logs made into billets and faggots and burnt in the house, and underwood and thorns used for repairing the fences, pay no tithes.—1 Ann. Scacc. *Burrell v. Greenacres*. i. 646

70. A prohibition was moved for on suggestion that the libel was for loppings cut from the stumps of timber trees above the growth of twenty years; but it was refused because it had not been pleaded below, and any special matter which deprives the spiritual court of jurisdiction must be pleaded there. If they had refused to admit the plea, prohibition would have been granted.—1 Ann. *Dike v. Browne*. i. 647

71. One may prescribe in a *non decimando* of wood; or it is a good plea, that it is for boughs, germs, &c. of timber trees of twenty years standing; and if that plea be denied below, prohibition lies, but if they receive it, they may try it.—Ann. B. R. *Anon.* i. 651

72. Setting out tithe-wood by loose heaps is good, but there may be a different custom in a parish, and in such case there shall be no allowance for the charge of binding, &c. *Quære*, whether ash poles used in husbandry be titheable.—3 Ann. Scacc. *Gee v. Perck*. i. 658

73. Tithe of wood is due by custom only.—3 Ann. B. R. *Anon.* i. 666

74. A custom that wood burnt in husbandry houses, or spent in repairing the farm fences is discharged of tithes, is good.—4 Ann. Scacc. *Waterman v. Jones*. i. 671

75. Tithes of underwood and wood above twenty years growth cut and corded, and of the bark stripped from the same, and of saplings cut for poles under twenty years growth decreed; but not for wood of twenty years growth not corded, or of its bark.

76. A custom alleged by the vicar that owners of woods in his and other adjacent parishes used and ought to size, make up, and cord their

wood into marketable ware, and then to set out the tithes thereof.—4 Ann. Scacc. *Greenway v. Earl of Kent.* i. 677

77. The woodlands, situated in Little Leybourne, in the county of Kent, are within the Weald, and tithe free.—9 Ann. Scacc. *Spate-man v. Know.* i. 697

78. Wood cut to be used in mending hedges, and upon the land, is titheable.—9 Ann. Scacc. *Smith v. Williams.* iii. 1234

79. The part of Bourne Wood which lies in the parish of Reuking, in the county of Kent, is within the Weald of Kent, and tithe free by custom and usage.—11 Ann. Scacc. *Brett v. Franklyn.* i. 701

80. A custom that the parson should take the underwood growing upon one acre in lieu of the tithes of four woods, held good.—1 Geo. Scacc. *Babbage v. Rookewood.* i. 714

81. A custom that the rector of Aldham, in Suffolk, is to take all the wood growing on a piece of woodland, containing an acre and a half, in lieu of the tithes of wood felled on ancient wood grounds, in the said parish, is good.—1 Geo. Scacc. *Spooner v. Head.* i. 717

82. No tithes of hop-poles.—4 Geo. Scacc. *Bate v. Spratling.* i. 736

83. The court said that a parish could not prescribe in *non decimando* for tithe wood: but the reporter observes, that he did not find it certainly determined whether tithe were due of wood of common right.—6 Geo. Scacc. *Jordan v. Colley.* i. 754

84. Timber shall be presumed to be above twenty years growth, unless the contrary be proved.—9 Geo. Scacc. *Lloyd v. Mackworth.* i. 788

85. Assart means lands grubbed up and made fit for tillage.—9 Geo. Scacc. *Evans v. Newell.* i. 788

86. Tithe is due of furze, and of underwood, although cattle were depastured where it grew.—10 Geo. Scacc. *Phillips v. Symes.* i. 800

87. No tithes are due of oak, ask, and beech above twenty years growth, or beech wood proceeding from stools originally maiden trees above that age.—11 Geo. Scacc. *Bibye v. Hurley.* i. 805

88. Upon a bill for tithe wood, an issue was directed to try whether there was a custom in the hundred in *non decimando* for all wood cut therein, and the plaintiff refusing to try it, the issue was taken *pro confesso*, and the bill dismissed with costs.—11 Geo. Scacc. *Rives v. Fitzherbert.* i. 811

89. No tithe is due of loppings and toppings of wood above twenty years growth.—13 Geo. Scacc. *Thompson v. Holt.* i. 826

90. To a bill in the spiritual court for tithe of *silva cædua*, it was pleaded, that the wood was not titheable: on a motion for a prohibi-

tion, suggesting that the wood was *tim* twenty years growth, the court held, *th* jurisdiction arising to the spiritual *co* matter in the libel, could not be taken but by other matter disclosed in the plea that the plea ought to have stated the *tr* be of twenty years growth; and refused *hi* bition.

91. Tithe of *silva cædua* due by the *l* England as much as any other tithe.—*l* Geo. 2. B. R. *Bouton v. Hursler.*

92. Underwood being felled for the *pu* of being converted into hoops, mop-staves held, that the setting out of the tithe there rows as the wood was felled was suffi and the rector's bill for an account, *ir* ing that the wood ought to be made into gots and stacks, and the tithe then set out, dismissed with costs.—3 & 4 Geo. 3. *Sc* *Bree v. Drew.* ii

93. Apples and other fruits are confess small tithes: but the wood of apple-trees, other fruit trees, if cut in a year when no *t* is paid of the fruit, is, as other wood for fir a great tithe; but in the year when tithe paid of the fruit, if then felled, no tithe shall paid of the wood, the fruit being looked on the principal.—12 Geo. 2. Scacc. *Wallis Pain.* ii.

94. Tithes are not payable for the lops a tops of ancient pollard trees.

95. The use to which wood is applied, is criterion to determine whether it be liable the tithe or not.

96. Beech trees may be timber by the *cu* tom of the country.—25 Geo. 2. Canc. *Wa* *ton v. Tryon.* ii. 12

97. Billets and faggots, made from the *cu* tings of trees above the growth of twenty year before they were made pollards, are not liabl to the payment of tithes.—26 Geo. 2. Scacc. *Modern v. Knight.* ii. 12

98. Wood burned in the house is not exemp from tithe of common right, but may be so by custom.—10 Geo. 3. Scacc. *Erskine v. Ruffle* ii. 235

99. *Semble*, that tithes are due for reeds and germins springing from stocks or roots of trees of any age, size, or growth. In this case the greater part of the trees was beech.—15 Geo. 3. Scacc. *Walbank v. Hayward.* iii. 1245

100. A custom for hedge rows, when less than a rod in width, to be exempt from tithes, held to be clearly bad.—38 Geo. 3. Scacc. *Mantell v. Paine.* iii. 1380

101. *Semble*, that tithes are payable for germins, cut from the stools of trees, though the trees are above the age of twenty years, and privileged as timber.—52 Geo. 3. Scacc. *Lewis v. Snell.* iii. 1388

102. Oak wood of more than twenty years

standing, not growing from acorns, but from stools, which stools belonged originally to trees which had stood more than twenty years, are held not to be so clearly entitled by statute 45 Edw. 3. c. 3. to exemption from tithes, as to make a verdict which subjected them to tithe a wrong verdict.—55 Geo. 3.

R. *Ford v. Racster.* iii. 710

103. Wood consumed for fuel by the farmer at his house of husbandry is not exempt from tithe, unless by special custom.—59 Geo. 3. Consist. Court. *Lagden v. Flack.* iii. 973

104. A custom in a part of a hundred exempting hedges and hedge rows, less than a rood in width, from tithes of wood and underwood, is bad.

105. No custom in *non decimando* can be set up except for wood, and for a known ancient district, not less than a county or a hundred.—

& 2 Geo. 4. Canc. *Page v. Wilson.* iii. 1029

106. Wood springing from the roots or stools of trees is titheable, and neither its own age, nor the age of the trees from the roots or stools of which it springs, will exempt it.

107. Tithe of wood is due of common right.

108. There may be a prescription in *non decimando* for a district; or even for a hundred.

109. Where a prescription in *non decimando* is set up, the party must shew the specific ground upon which he claims to prescribe.—4 Geo. 4.

Canc. *Chichester v. Sheldon.* iii. 1102

WOOL.

1. A custom to pay the tenth fleece of wool in satisfaction for all locks and tithes due for wool held good.—37 El. B. R. *Jesop v. Payne.* i. 110

2. A prescription to be discharged of locks of wool ought to be shewn of locks casually lost.—38 El. B. R. *Anon.* i. 113

3. A custom to pay tithe wool at Lammas-day is good, though it is *de jure* due when it is clipped.—41 El. B. R. *Green v. Hun.* i. 147

4. It was said, that if a man keep sheep in one parish until shearing time, and then sell them into another parish, the vendee shall pay the tithe wool to the parish in which they were depastured for the greater part of the time of the growing of the wool.—4 Jac. Scacc. *Anon.* i. 166

5. No action lies upon 2 Edw. 6. for not setting out tithes of lamb and wool for they are not prædial.—10 Jac. C. B. *Anon.* i. 203

6. A custom to pay the tenth part of wool without view of the parson is bad.—13 Jac. B. R. *Wilson v. the Bishop of Carlisle.* i. 250

7. It is a good *modus decimandi* that in consideration the parishioner has paid tithe wool of all his sheep which he has shorn as well of those

he bought two days before the shearing, as of others he had kept through the whole year, he has used time, &c. to be discharged of tithe wool of sheep that he sold two days before the shearing, for by the spiritual law they should have tithes of him, and *de residuo pro rata* which he sold before shearing, and therefore in consideration that he here pays of those which he bought so small a time before the shearing for the whole year, which is not due by the spiritual law, it is therefore good.—14 Jac.

1 Ro. Abr. 648.

8. A custom to be discharged of tithe of neck wool, in consideration of the payment of the tenth fleece at shearing time is good; but a prohibition was granted upon suggestion, that they used, for this, to wind up the other fleeces at their own charge.

9. It was insisted that an abuse in the cutting of neck wool should be shewn on the other side, but denied by the court.—14 Jac. B. R. *Fosse v. Parker.* i. 260

10. If a man pay tithe lamb at Marktide, and at Midsummer he shears the residue of the lambs, viz. the nine parts,—he ought to pay tithe wool of them, though there be but two months between the time of the payment of the tithes of lambs which were not shorn paid with their fleeces and the shearing of the residue, for this is a new increase.—16 Jac. *Nicholls v. Hooper.* 1 Ro. Abr. 642.

11. Prohibition was granted for tithe of pelt wool of sheep fattened for the house, or which had died.—3 Car. B. R. *Cicill v. Scott.* i. 357

12. A prohibition was denied to a suit for tithe wool of rotten sheep; Jones said, if sheep be sold, the parson shall be allowed for tithe of them after shearing.—3 Car. B. R. *Anon.* i. 360

13. If a parishioner cut his dirty locks from his sheep for their better preservation from the vermin before the time of shearing, and does this without fraud, no tithes shall be paid of these.—14 Car. B. R. *Dent v. Salvin.* 1 Ro. Abr. 646

14. A prohibition was granted, where a consideration was surmised, viz. that he wound up the tenth fleece for the parson.—14 Car. B. R. *Williams v. Wilcox.* 1 Ro. Abr. 646.

15. If a man kill sheep, yet he shall pay tithe of the wool that comes off them, but not for the skins.—14 Car. B. R. *Dent v. Salvin.* 1 Ro. Abr. 646

16. A custom to set out for tithes of wool one fleece from six to sixteen, the parishioner to pack it, and the parson to take one unseen and untouched, is unreasonable.—24 Car. 2. B. R. *Wall v. Bezier.* i. 495

17. Wool is severable and every part of it titheable, and the parson may have the tenth

ounce, or part of an ounce.—13 W. 3. B. R. *Selby v. Clarke.* i. 641

18. Locks of wool are not titheable.—2 Ann. Scacc. *Lister v. Foy.* i. 654

19. A custom to deliver the tenth fleece of all wool shorn from sheep in the parish, at or in the chancel or parish church in lieu of tithe wool, first giving notice at the house of the vicar, established.—11 Geo. Scacc. *Gould v. Pearce.* i. 806

20. In a suit in the spiritual court for tithes in kind, the tenth fleece of wool being demanded, a custom to pay the tenth pound, held not to be a modus, but only a different manner of

paying the tithe in kind, and a prohibition was denied.—1 Geo. 2. B. R. *Wilson v. Wilkinson.* ii. 6

21. The parson is entitled to the tithe of wool of lambs, though he has received the tithe of the lambs in their wool.—22 & 23 Geo. 2. Scacc. *Carthew v. Edwards.* ii. 121

22. Tithe wool is due *de jure*, when clipped, but by prescription may be set out another day.—24 & 25 Geo. 2. Scacc. *Ryder v. Gould.* ii. 122

23. Tithe of wool may be due in one parish; and tithe of agistment in another.—12 Geo. 3. Scacc. *Ellis v. Fermor.* iii. 1242

THE END.

100-100-1

Standard Law Library



3 6105 062 790 683

